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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 78.

CARONDELET CANAL AND NAVIGATION COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED AUGUST 3, 1911.

(22,829)



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1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

No. 89798.

Civil District Court for the Parish of Orleans.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION COMPANY, A. J. DAVIDSON, J. H.
ELLIOTT, and HANS WIDMER, Liquidators Thereof.

Civil District Court, Parish of Orleans, Division "C".

*Detailed List of All Docket Entries in Chronological Order from
Docket Number Five in the Above Numbered and Entitled Cause
from the 19th Day of May, 1909 (the Date of Filing the Original
Petition) to the 28th Day of March 1910 (the Date of Filing
the Motion of Appeal), Both Inclusive.*

1909.

May 19. Petition. 3 copies of petition and 3 citations.

24. Exceptions.

29. Return to three citations.

June 7. Order fixing exceptions.

9. Return to order fixing exceptions.

28. Exceptions submitted. Filing two documents.

July 6. Notes of evidence and duplicate.

Nov. 7. Exceptions overruled.

15. Order granting delay.

24. Answer.

Dec. 6. Answer of Carondelet Canal & Navigation Co.

1910.

Mch. 4. Four subpoenas.

7. Continued.

7. Filing 5 documents.

8. Continued.

9. Two maps.

9. One photographic map and copy of transcript.

9. Twelve documents.

9. Submitted.

21. Opinion. One Document. Judgment.

28. Rule for new trial. New trial refused. Judgment signed.

28. Motion of appeal.

Petition.

Filed May 19th, 1909.

Civil District Court for the Parish of Orleans.

No. 89798.

STATE OF LOUISIANA

VS.

CARONDELET CANAL & NAVIGATION COMPANY OF NEW ORLEANS, A.
J. Davidson, J. H. Elliott and Hans Widmer, Liquidators
Thereof.

Civil District Court, Division "C".

To the Honorable the Judges of the Civil District Court in and for
the Parish of Orleans, State of Louisiana:

The petition of the State of Louisiana, appearing herein through
its Attorney General, Walter Guion, respectfully represents

3 That your petitioner owns, and is entitled to possess, control, manage and administer, to the exclusion of all others, for the use of the public, all that certain property or area known as the "Carondelet Canal, Bayou St. John, and the Old Basin", situated in the Parish of Orleans, together with all the property and improvements connected therewith or, in any wise, thereto belonging or appertaining.

That same are now and have been, for many years last past, in the possession of, and controlled, managed and operated by, the Carondelet Canal & Navigation Company of New Orleans, a corporation created by the General Assembly of the State of Louisiana, by Act No. 160 of the Acts of 1857, approved March 16th, 1857, and, by that act, domiciled in the Parish of Orleans.

That, by the terms of said act, said corporation was given an existence of twenty five years from and after the 17th, October, 1857, and it was provided that, in the event your petitioner should determine not to take possession of said property at the expiration of said period of twenty five years, said corporation should have a further existence of twenty five years more, from and after the expiration of said first term of twenty five years, thus making a term of fifty years as the period of corporate existence which said corporation was given, and the period of the time during which it might possess and control said property; it being declared, in and by said act No. 160 of 1857, and as a consideration for the creation and giving of corporate existence to the said Carondelet Canal & Navigation Company of New Orleans, and the right to enjoy all the privileges and

benefits conferred upon the said corporation, in and by said act, that, at the expiration of said period of fifty years, all of said property would be surrendered by it to the State of Louisiana, without any claim whatever on its part against your petitioner for the same.

4 That, in order that your petitioner might be in a position to assume and take the control, management and administration of the said Carondelet Canal, Bayou St. John and Old Basin, together with all the property and improvements connected therewith, or in any wise thereto appertaining or belonging, at the expiration of the time during which the said Carondelet Canal & Navigation Company had the right to possess, control and manage, the same, the General Assembly of the State of Louisiana, at its session in 1906, by Act No. 161, approved July 11th, 1906, provided for the appointment, by the Governor of the State of Louisiana, of a board of five members, to whom was given, by the act, such control, management and administration, that the Governor has appointed the members of the Board provided for and contemplated by that act; and that said Board is ready and prepared to assume the control, management and administration of all of said property.

Now petitioner avers that, notwithstanding the fact that the term or period, during which said Carondelet Canal & Navigation Company of New Orleans had the legal right to possess and control said property, has long since terminated and expired, it continues to hold, control, manage and operate the same without legal right so to do, and illegally refuses to deliver the same to your petitioner and to allow your petitioner to take possession of same through the board appointed as aforesaid by the Governor, for the purpose of controlling, managing and administering the same, and that, although amicable demand has been made, in writing, by your petitioner and by said Board appointed by the Governor as aforesaid, acting for and in behalf of your petitioner, upon the Liquidators of the said Carondelet Canal & Navigation Company of New Orleans, representing said corporation, to deliver to petitioner the possession and control of said property, they have refused and

5 continue to refuse to comply with said demands.

That said liquidators and said Carondelet Canal & Navigation Company of New Orleans, represented by them, refuses to comply with the demand of your petitioner to deliver the possession and control of said property to petitioner, on the ground and for the reason that your petitioner had not complied with certain alleged contract obligations of petitioner to said Carondelet Canal & Navigation Company of New Orleans which they claim your petitioner had undertaken towards it in and by Section 4 of Act No. 74 of the acts of the General Assembly of this State, Approved 10th, March, 1858, and that, — such alleged obligations, on the part of petitioner, are complied with, they will continue to refuse to deliver said property to your petitioner.

Now petitioner avers that, by Section 20 of Act No. 160, of 1857, heretofore referred to, it was provided that, at the expiration of the term during which said Carondelet Canal & Navigation Company of New Orleans would have the right to control and management of said Canal and other property of the State, your petitioner would be entitled to take possession thereof, together with all of the property and improvements connected therewith and thereto appertaining or belonging, the whole of which would become the absolute property of your petitioner, as is the Carondelet, and Bayou St. John and Old Basin, without any obligation whatever on its part to compensate or pay said Carondelet Canal & Navigation Company of New Orleans for the same, and that there is no obligation whatever resting upon your petitioner, as claimed by the liquidators aforesaid, and by said corporation, to pay them for the same, or for any part thereof.

Now petitioner avers that there is nothing contained in Section 4 of Act No. 74 of 1858, or any part of the act, which im-
6 poses any legal obligation upon your petitioner to pay for the property and improvements or for anything connected with or belonging or appertaining to said Carondelet Canal, Bayou St. John and Old Basin on the State's taking possession of same, and for the possession of which petitioner has made amicable demand, but that if there be contained therein any provisions, imposing such an obligation upon your petitioner, as claimed by said Carondelet Canal & Navigation Company, by the liquidators thereof, the same would be and is utterly unconstitutional, null and void, and of no effect, by reason of the same being violation of the Constitution of 1852 of the State of Louisiana, and especially of Articles 108 and 109 of said Constitution, which prohibit the granting of aid by the State to companies and corporations formed for the purpose of making works of internal improvements except in the manner especially set forth therein, and that the payment by petitioner to said Carondelet Canal & Navigation Company of New Orleans for any of said property, would be in aid of such corporation and, therefore, prohibited by said Constitution of 1852, and especially by said Articles thereof, and petitioner avers, further, that the carrying out of the provisions of said Section 4 of Act No. 74 of 1858 would be, in effect, a giving by the State, to a private corporation, of property belonging to the State, in violation of public right and public policy, and entirely beyond the power of the legislature.

Petitioner avers further that, even if Section 4 of Act No. 74 of 1858 be constitutional, which, however, is denied, nevertheless there can be no obligation upon petitioner to pay to the Carondelet Canal & Navigation Company of New Orleans for any property other than that named in said Act, even if there be any such obligation, which however, is denied, and that there is no obligation upon petitioner to pay for any property, the possession and control of which has been refused to petitioner as aforesaid.

7 Now petitioner avers that, even if said Carondelet Canal & Navigation Company has the legal right to make a claim against your petitioner for the whole, or for any of said property or improvements connected with and which belong or appertain to said Carondelet Canal, Bayou St. John and Old Basin, which however, is denied, it has no legal right to refuse to deliver to your petitioner the possession and control of the said Carondelet Canal, the Bayou St. John and Old Basin themselves, from the Old Basin on Toulouse Street to Lake Pontchartrain, as your petitioner is the absolute and sole owner of same and is entitled to take possession thereof regardless of any claim which said Carondelet Canal & Navigation Company may have in respect to such property and improvements as may be connected therewith or which may belong or appertain thereto.

Petitioner avers further that, some time prior to the 12th, November, 1904, the New Orleans Terminal Company brought a suit in this Honorable Court to expropriate a certain piece or triangle of ground in the City of New Orleans bounded by Villere, Toulouse and Robertson Streets, and Carondelet Walk upon which was built the office of the Carondelet Canal & Navigation Company of New Orleans; that your petitioner intended to resist said expropriation suit, claiming that said property, so sought to be expropriated, was the property of your petitioner; and that, finally, on the 12th, November 1904, an agreement was entered into by and between your petitioner, represented by his Excellency Newton C. Blanchard, and by Walter Guion, the Governor and Attorney General, respectively, of the State of Louisiana, and said New Orleans Terminal Company and the Carondelet Canal & Navigation Company of New Orleans, subject to approval and ratification by the General Assembly of the State of Louisiana, whereby said New Orleans Terminal Company was given the right to take said piece or triangle of ground on paying therefor the sum of three thousand dollars as the
8 value of the same, and that said amount was, thereupon, on said 12th, November 1904, by agreement entered into as aforesaid deposited by the said New Orleans Terminal Company in the Hibernia Bank & Trust Company of New Orleans, until such time as it would be determined whether the same should be paid to your petitioner or to said Carondelet Canal & Navigation Company of New Orleans; that by Act No. 77 of the Acts of the General Assembly of the State of Louisiana, approved July 4th, 1906, said agreement, so entered into, was approved and ratified in all of its parts, and that the said amount is now on deposit in said bank awaiting a final determination of the question as to whether the same should be paid to your petitioner or to said Carondelet Canal & Navigation Company of New Orleans, and the same is now claimed, as it has always been claimed, by your petitioner, to be the property of your petitioner and as forming part of the property, the possession of which your petitioner has already made amicable demand upon said Carondelet Canal & Navigation Company of New Orleans, as aforesaid.

Petitioner avers, further, that, ever since the expiration of the fifty years' period during which said Carondelet Canal & Navigation

Company of New Orleans had the legal right to hold, possess, manage and operate, said Carondelet Canal, Bayou St. John and Old Basin, to-wit: the 17th, October 1907, it has continued to hold, possess, manage and operate the same, and to collect and receive tolls and other revenues therefrom, in violation of the rights of your petitioner, who had the legal right to collect and receive the same, and that said Carondelet Canal & Navigation Company of New Orleans should be compelled to render an account to your petitioner for the management, administration and operation of said property, from and after the 17th, October 1907, until such time as petitioner will be put in the possession and control of the same, and that judgment should be rendered in favor of your petitioner and

9 against the said Carondelet Canal Navigation Company of New Orleans for such amount as upon a proper accounting will be shown to have been received and collected as aforesaid and to be due to your petitioner by reason of its ownership of said property.

The Premises Considered,

Your petitioner prays that said Carondelet Canal & Navigation Company of New Orleans, through the liquidators thereof, A. J. Davidson, J. H. Elliott and Hans Widmer, be cited, and each served with a copy of this petition, and after due delays and formalities that your petitioner do have judgment in its favor and against said Carondelet Canal & Navigation Company of New Orleans ordering, adjudging and decreeing that the Carondelet Canal, Bayou St. John and Old Basin, together with all the property and improvements connected therewith or thereto appertaining and belonging, including the aforesaid sum of Three Thousand Dollars (\$3,000.00), now on deposit in the Hibernia Bank & Trust Company be delivered to and into the possession and control of your petitioner, to be managed and administered by it for the use of the public, through the Board of Control for the Bayou St. John and Carondelet Canal and Old Basin, appointed as aforesaid by the Governor of Louisiana under the provisions of Act No. 181 of 1906, and that the same be so delivered to your petitioner free from any obligation on its part to pay or compensate said Carondelet Canal & Navigation Company of New Orleans for the same or for any part thereof, and that Act No. 74 of 1858, and especially Section 4 thereof, which are the basis of the claim of the said Carondelet Canal & Navigation Company of New Orleans for compensation, in so far as the same may be regarded as imposing obligation upon your petitioner, to pay or compensate said Carondelet Canal & Navigation Company of New Orleans for such property and improvements or for any part thereof, be declared unconstitutional, null and void for the reason already given;

10 but, in the event that this Honorable Court should hold that there is an obligation resting upon your petitioner to pay or compensate said Carondelet Canal & Navigation Company of New Orleans for said property and improvements, or for any part thereof, that, nevertheless, judgment be rendered in favor of petitioner and against said Carondelet Canal & Navigation Company of New Orleans, putting your petitioner in immediate possession of said

Carondelet Canal, Bayou St. John and Old Basin, without awaiting a final determination of the question of liability on the part of your petitioner to said Carondelet Canal & Navigation Company of New Orleans, as claimed by it, and the settlement and adjustment of the amount thereof, should this Honorable Court hold that there is any such obligation resting upon your petitioner.

Petitioner prays further that said Carondelet Canal & Navigation Company of New Orleans, through the aforementioned liquidators, be ordered to render an accounting, showing its receipts and disbursements on account of its management of said property since the 17th, of October, 1907, and that petitioner do have judgment against and recover from it such amount as, upon said accounting, will be shown to be due to your petitioner by said Carondelet Canal & Navigation Company of New Orleans, arising from the control, management and operation of said Carondelet Canal, Bayou St. John and Old Basin since the 17th, October 1907.

And for costs and for all and general relief.

(Signed)

WALTER GUION,
Attorney General.
R. G. PLEASANT,
Of Counsel.

(Signed)

11

Exception.

Filed May 24th, 1909.

Civil District Court, Division "C."

No. 89798.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION CO.

Now come the defendants and for exception to plaintiff's demand aver and plead as follows:—

First. That the Hon. Walter Guion, Attorney General of the State of Louisiana, has no right, power or authority to bring this suit in the name of the State, or to implead the State for the object and purposes set forth in the petition in this cause.

And in support of this plea defendant- aver that the proceedings of the Legislature for the year 1906 show that the Legislature declined to authorize the Attorney General to implead the State in this cause and for the purposes herein set forth.

Wherefore defendants prays that this exception be maintained and the suit of the State dismissed with costs.

And in case the above exception is overruled defendant- further except, plead and aver;

That the plaintiff's petition does not set out or aver how the State's title to the property sued for in the petition arose, or when or how or by what means or under what circumstances the title to said property was acquired by the State and that defendant- have a right

under the express provisions of Art. 172 of the Code of Practice to demand of the State a setting forth and exhibition of its claim of title to the property sought to be recovered in this action.

Wherefore defendants pray that this exception be maintained with costs and that unless the state shall within a delay to be fixed by the Court amend its petition so as to set forth in detail the origin of its title to the property sued for, the same shall stand dismissed with costs.

(Signed) FARRAR, JONAS, KRUTTSCHNITT &
GOLDBERG,
SAUNDERS, DUFOUR & DUFOUR,
BEN. T. WALDO,
Att'ys for Defendants.

Division "C," Civil Dist. Court.

No. 89798.

STATE OF LOUISIANA
vs.
CARONDELET CANAL & NAVIGATION Co.

On Exceptions.

Notes of Evidence, taken in open Court before the Hon. E. K. Skinner, Judge, on the 28th of June, 1909, by A. E. Oliveira, Stenographer.

Present:

For Plaintiff: Walter Guion, Attorney General.

For Defendant: Farrar, Jonas, Kruttschnitt & Goldberg; Saunders, Dufour & Dufour, and Benjamin Taylor Waldo.

By the ATTORNEY GENERAL:

On behalf of the State of Louisiana I offer, produce and file in evidence a letter of date June 2nd, 1909, addressed to Walter Guion, Attorney General, from J. Y. Sanders, Governor of Louisiana, marked P 1. I further offer, produce and file in evidence, a certified copy of a petition, with affidavit and order thereon, in the suit entitled: Carondelet Canal & Navigation Company vs. City of New Orleans, No. 30166 of the docket of the Civil District Court, Division "E"; this offer is made for the purpose of showing that in the suit No. 30166 the Carondelet Canal & Navigation Company alleged itself to be the lessees of the property, and it is also offered as a judicial admission to show the fact that they claimed no title in that property, marked P 2.

By Mr. FARRAR:

Objected to on the ground, first that, this case is being tried upon an exception of, want of power in the Attorney General to bring this suit; second, on the ground that the State of Louisiana has not

set up the origin of her title to the property; and further, that the trial is to be on the face of the pleadings as to whether or not they are sufficient; and the plaintiff cannot make out the insufficiency of its pleadings by offering in evidence a suit between other parties to which the State was not a party, in which some averment is made relative to the character of the title which the plaintiff owns.

By the ATTORNEY GENERAL:

It is offered in addition not only for the purpose of showing judicial admission on the part of the Carondelet Canal & Navigation Company, but also for the purpose of showing an absolute estoppel of the Carondelet Canal & Navigation Company to set up the exception that is now urged.

By Mr. FARRAR:

It is not admissible to prove an estoppel because an estoppel is not at issue in this case; there is no issue of an estoppel here, and the plaintiff cannot better its pleadings by proving an estoppel
14 which was not an estoppel because the State was not a party direct or indirect to that suit, and the question of the title of the Carondelet Canal & Navigation Company was not in issue. Again that Company might be the lessee and yet the State not the owner.

By the COURT:

The Court will hear full argument on the exception before it rules on these objections.

By Mr. FARRAR:

Defendant offers in evidence the journal of the Senate of the State of Louisiana of the year 1906, and a certified copy of the original Senate bill No. 89 by Mr. Louque, to be produced when obtained from the Secretary of the Senate.

NOTE.—Matter argued and submitted.

A true and correct report.
(Signed)

A. E. OLIVEIRA,
Stenographer.

Endorsed on back: No. 89,798, Div. C. State of La. vs. Carondelet Canal and Navigation Co. Note of Evidence on Exception. Filed July 6th, 1909. (Signed) Jos. Garidel, Dy. Clk.

EXHIBIT MARKED "P-1."

(Letter, Dated New Orleans, June 2nd, 1909, Addressed, Hon. Walter Guion, Attorney General; Signed, J. Y. Sanders, Governor of Louisiana); Offered in Evidence by the State of Louisiana.

Filed June 28th, 1909.

NEW ORLEANS, June 2nd, 1909.

Hon. Walter Guion, Attorney General, City.

15 DEAR SIR: I understand that, in the suit of the State of Louisiana vs. The Carondelet Canal & Navigation Company, now pending in the Civil District Court for the Parish of Orleans, an exception has been filed as to your right, as Attorney General of Louisiana, to bring the suit in the name of the State.

You will, doubtless, remember the interview which took place in your office some time before you brought this suit when I told you I fully concurred with you in the propriety of your bringing the action and of my positive declaration to you that it was my desire that the suit should be brought.

I can only repeat now what I said then to you, that the suit was brought with my entire approval and that it is my present desire that it should be prosecuted by you as the Attorney General of the State.

Yours very respectfully,
(Signed)

J. Y. SANDERS,
Governor of Louisiana.

EXHIBIT MARKED "P-2."

(Certified Copy of Petition, Affidavit and Order Filed in the Matter Entitled Carondelet Canal Navig. Co. vs. City of New Orleans, No. 30166, Civil District Court); Offered in Evidence by the State of Louisiana.

Filed June 28th, 1909.

Civil District Court, Division "E."

No. 30166.

CARONDELET CANAL NAVIG. CO.

VS.

CITY OF NEW ORLEANS.

To the Hon. the Civil District Court for the Parish of Orleans:

16 The petition of the Carondelet Canal Navigation Co. a corporation duly created under the laws of Louisiana, respectfully represents:

That your petitioners are the Lessees and possessors of a certain tract of land or portion of ground with improvements thereon situated in the 3d. Municipal District of the City of New Orleans, designated as lot No. 2 and known as the lower part of the Bayou St. John said tract measures 192 feet front on Bayou St. John by 575 feet in depth;

That said portion of ground was transferred to your petitioners by the Orleans Navigation Canal Co., as a part of the property the enjoyment of which your petitioners were to have during the existence of their franchise;

That under section 9 of the Act of 1858 No. —, said property is exempt from taxation;

That the City proceeds to advertise the same and will proceed to a sale unless enjoined by this Hon. Court, and cause irreparable injury to petitioner;

That the description is null and not such as the law requires;

That W. J. Comerford has no right to seize and sell the same;

Wherefore petitioner prays that an Injunction issue herein directed to the City of New Orleans enjoining her from proceeding any further in the collection of the tax of 1888; and that said city be cited hereto and after due proceedings that the injunction be made perpetual and the city condemned to pay petitioner One Hundred and fifty Dollars, damages and for general relief &c.

(Signed)

CHAS. LOUQUE, *Att'y.*

17 Philip Avegno being duly sworn says: that all the facts and allegations of the foregoing petition are true and correct.

(Signed)

PH. AVEGNO, *Pres't.*

Sworn to and subscribed before me this 14th, day of May, 1890.

(Signed)

H. MESSONNIER, *D'y Clk.*

Order.

Let a writ of injunction issue as herein prayed for and according to law upon petitioner furnishing bond in the sum of One Hundred Dollars conditioned as the law requires.

New Orleans, May 14th, 1890.

(Signed)

ALBERT VOORHIES, *Judge.*

A true copy.

(Sg.)

T. CONNELL, [SEAL.]

*Clerk Civil District Court, Parish of
Orleans, State of Louisiana.*

Reasons for Judgment on Exceptions.

Filed November 5th, 1909.

No. 89798.

STATE

VS.

CARONDELET CANAL, &c., &c.

1st. The Attorney General has the authority to bring this suit and stand in judgment.

See Sec. 131 R. S.

Act 65 of 1884.

Act 12 of 1886.

Letter of Governor.

119 La. p. 482 Hackley Hume case.

18 2nd. The claim is not one testing the title to property under Act 472 C. P. but by a grantor of possession seeking to recover possession.

The plaintiff alleges the right of the State to be based upon Act 160 of 1857 and as set forth in the Act.

36 A. 397.

44 A. 396.

7 A. 679.

Exceptions Overruled.

*Exceptions Overruled. Extract from the Minutes of Division "C,"
Friday, November 5, 1909.*

Present: The Honorable E. K. Skinner, Judge.

No. 89798.

STATE OF LOUISIANA

VS.

CARONDELET CANAL & NAVIGATION CO. OF NEW ORLEANS.

In this case submitted for adjudication for the written reasons filed on this day: It is ordered and decreed that the exceptions herein filed by the defendants be and are overruled at their cost, and they are allowed ten days to answer.

Motion for Delay.

Filed November 15th, 1909.

No. 89798.

Div. "C," Civil District Court.

STATE OF LOUISIANA

vs.

CARONDELET CANAL AND NAVIGATION COMPANY.

19 On motion of Benjamin T. Waldo, Farrar, Jonas, Goldsborough and Goldberg and Saunders, Dufour and Dufour, of Counsel for the defendant, and on suggesting to the Court that on November 5th, 1909, the exception- filed by the defendant were overruled and the defendant allowed by the Court ten days within which to answer the plaintiff's petition.

And on further suggesting to the Court that the defendant's counsel desires an additional ten days within which to prepare and file the answer of the defendant;

It is ordered that the defendant be granted until November 25th, 1909, to file their answer to the plaintiff's petition.

New Orleans, La., November 11th, 1909.

O. K.

E. K. S.

Motion and Order to Extend Time for Defendant to Answer.

Filed November 24th, 1909.

No. 89798.

Civil District Court, Division "C."

STATE OF LOUISIANA

vs.

CARONDELET CANAL AND NAVIGATION COMPANY.

On motion of Benjamin T. Waldo, Farrar, Jonas, Goldsborough & Goldberg and Saunders, Dufour & Dufour, of counsel for defendant.

On suggesting to the Court that the contemplated answer of the defendant to be filed herein necessitates an inquiry into and review of all of the history of the defendant corporation and its predecessors, covering a period of more than one hundred years together with an inquiry into the law and jurisprudence related to and affecting said corporations;

20 On further suggesting to the Court that with the utmost attention and diligence counsel has been unable, within the extended time granted by the Court herein, to properly formulate in its entirety the answer aforesaid.

On further suggesting that in view of the mass of facts to be investigated and arranged and to be incorporated in said answer further time is required by defendant within which to prepare and file this answer.

On further suggesting to the Court that defendant is anxious to put this case at issue and have the same tried at the bar of this Court, and that movers earnestly desire to expedite the trial of this case;

On further suggesting that no possible discomfort, harm, or injury can accrue to the plaintiff through reasonable further time granted defendant to answer, but that the cause of justice may be served thereby;

On further suggesting to the Court that the plaintiff can at any time after issue joined move to have the cause set down for trial as a preference case;

It is ordered That the defendant have, and that the defendant is hereby granted, further time a delay until Monday, December 6th, 1909, within which to answer plaintiff's demand.

New Orleans, La., November 24th, 1909.

— — —, Judge.

Answer of Carondelet Canal & Navigation Company.

Filed December 6th, 1909.

21

Civil District Court, Division "C."

No. 89798.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION CO.

Now comes the Carondelet Canal & Navigation Co., herein represented by Hans Widmer, J. H. Elliott and A. J. Davidson, Liquidators thereof, and reserving particularly the benefit of the exceptions heretofore filed and overruled and again protesting that the Attorney General of the State of Louisiana has no right, power or authority to bring this suit and to attack the validity of a contract made between the State of Louisiana and Carondelet Canal & Navigation Co. which contract has often been maintained by the Courts of Louisiana and has been acquiesced in by the State for more than Fifty years, for answer to the plaintiff's petition denies all and singular the allegations therein contained, except those hereinafter specially admitted.

Defendant particularly denies that the State owns and is entitled to possess, control, manage and administer for the use of the public all that certain property or area known as the Carondelet Canal, Bayou St. John and Old Basin, situated in the Parish of Orleans,

together with all the property and improvements connected therewith or in any wise thereto belonging or appertaining;

And defendant denies that the State ever owned said property or ever had the right to control and manage the same, and avers that the State has no interest in that property, except under and by virtue of the contract made between the State and the Carondelet Canal & Navigation Co., as evidenced by Act No. 160 of the Acts 1857 and Act No. 74 of the Acts of 1858;

And in demonstration of the averment aforesaid this defendant recites the history of said property as follows:

22 In 1794 when the Territory of the State of Louisiana belonged to the Crown of Spain, the Baron de Carondelet, the representative of the Crown of Spain in the State of Louisiana, laid off a strip of ground extending from Bayou St. John to a point adjacent to the ramparts of the City of New Orleans. This strip of ground was 150 feet wide, French measure, and was supposed at that time to be laid off through property which belonged to the Crown, but as a matter of fact, a large portion of the said property through which the said strip of ground was laid off did not belong to the Crown, as the Crown had already made grants of said property to private individuals. Through the center of this strip of ground there was constructed by the Baron de Carondelet, with the aid of slave labor furnished by the inhabitants, a canal or ditch about 15 feet wide intended both for the purposes of navigation and for the purposes of drainage. The Bayou St. John at that time was a non-navigable stream, except for skiffs and pirogues. Because of the drainage of the City of New Orleans into the said canal the same became practically useless for all purposes of navigation.

By Chapter One of the Acts of the Legislative Council of the Territory of Orleans, approved July 3rd, 1805, said council incorporated a company known as the Orleans Navigation Co., the object of the establishment of this company being declared to be for the purpose of improving the inland navigation of the territory, said corporation was without limit of time as to its charter and was made capable in law to have, purchase, receive, possess and retain to it and to its successors therein, lands, rents, tenements, hereditaments, goods, chattels and effects of what kind, nature or quality whatsoever requisite for carrying into effect the purposes of the act.

23 That by Section 7 of said Act this company was given authority to enter upon all and singular the land and lands covered with water where they shall deem it proper to carry the canals and navigation, which they were authorized to construct and with or without the consent of the owners thereof to lay out such ground and tracts as should be most practicable for effecting navigable canals by means of locks and other devices, and the power of expropriation was given to said company to take lands for the purposes aforesaid.

That by Section 17 of the act, the operation of the Company was confined in the first instance to the improvement of the inland navigation of the County of Orleans and of the Bayou Plaquemine, and the right of the company to make, open or clear any other canal or

navigation in any part of the Territory was subject to the consent of the Governor.

By Section 9 of the Act it was provided that as soon as the company should have improved the navigation of the Bayou St. John so as to admit at low tides vessels drawing three feet of water from Lake Pontchartrain to the Bridge at the settlement of the Bayou, the company should be entitled to collect a toll of \$1.00 per ton, and when the company by its further improvements had made navigation from said Bayou by Canal Carondelet to the Basin it was entitled to have an additional toll of another \$1.00 per ton, and when the said navigation has been improved by the company so as to admit vessels drawing three feet of water from Lake Pontchartrain to any place within 100 yards of the Mississippi River, it was entitled to have and receive an additional toll of \$1.00 per ton, and when communication between said navigation and the Mississippi River was made complete, a tonnage charge of \$5.00 per foot of draft was imposed upon every vessel which passed from the Mississippi River into the means of Navigation constructed by the Company.

The capital stock of this Company was fixed by said charter at \$200,000.00.

24 This act of Territorial Council was, as decided by the Supreme Court of the State of Louisiana, in the case of State versus Orleans Navigation Co., reported in 11 Martin p. 321, approved by various and sundry acts of Congress hereafter to be mentioned, making grants to said corporation. It was evidently the intention both of the Federal authorities who made this grant and of the corporation itself to extend the said Canal to the Mississippi River, and in order to carry out the said intention the Congress of the United States by the Act approved March 3rd, 1807, 2nd, Statutes at Large, p. 440 in confirming the claim of the corporation of the City of New Orleans to the commons adjacent to said City inserted the proviso that the City of New Orleans shall reserve for the purpose and convey gratuitously for the public benefit to the company authorized by the Legislature of the Territory of Orleans, as much of the said commons as shall be necessary to continue the canal of Carondelet from the present basin to the Mississippi and shall not dispose of or for the purpose of building thereon any lot within 60 feet of the space reserved for a canal, which shall forever remain open as a public highway; and

By the Act approved February 10th, 1809, the Congress of the United States authorized the President of the United States to cause the Canal of Carondelet leading from Lake Pontchartrain by way of Bayou St. John to the City of New Orleans to be extended to the River Mississippi and made sufficiently deep throughout to admit an easy and safe passage to gunboats and making an appropriation of \$25,000 to carry out said purpose, which design was never carried out by the President.

By the Act approved April 18th, 1814, 6th, United States Statutes at Large, page 144 the Congress of the United States granted to the Orleans Navigation Co. for the use and benefit of said com-

pany forever a lot fronting on the Bayou St. John containing 180 feet front and 540 feet back.

By Act approved April 16th, 1816, the Congress of the United States granted to said company a lot of ground 300 feet front on Rampart Street in the City of New Orleans by 600 feet deep on a line with St. Peter Street, on which was erected the former Charity Hospital in said City, which belonged originally to the Spanish Government.

The corporation so chartered, entered into and took possession of the Canal Carondelet and the Bayou St. John, the first being a mere ditch 15 feet wide, with a small basin at the end near the ramparts of the City, and the latter being a non-navigable stream as aforesaid. The Company perfected the title to all such portions of the line of the canal as were found defective by purchases from the owners of the property, to-wit: from le Breton Dorgenoy, Daniel Clark, Domongo Fleitas, Madame Louise del a Ronde, Marie Mitchel and the Heirs of Griffon, by deeds dated July 31, 1811, and January 16th, 1828.

The company expended in the improvements and development of said property the sum of \$375,000 being \$175,000 in excess of its capital stock, and for the purpose of making said improvements and particularly for the construction of the basin and its landings it partially utilized the grant made by the Congress of the United States by the Act of April 16th, 1816.

Under a resolution approved February 16th, 1821, the State of Louisiana brought a suit to annul the charter of the Orleans Navigation Co. upon the ground that the Territorial Council had no authority to pass said act and also to forfeit said charter for non compliance with its conditions, and in the said suit the State maintained the position that the title to the property to the Canal Carondelet was in the United States; and in the said suit the State at no time or under any circumstances claimed to have any ownership in and to said property or any part thereof. Said suit was decided against the State on all the claims raised by the State and in the said suit the Court found and decided that all of the capital of the said company had been expended in improving the Canal and the Bayou St. John.

Subsequently, under the provision of Act No. 244 of the Acts of 1847, the Attorney General instituted legal proceedings against the Orleans Navigation Company for a forfeiture of its charter on the ground that the company was insolvent and unable to comply with its corporate franchises. This suit was decided by the Supreme Court of Louisiana in favor of the State and a decree was entered to the effect that the corporation had forfeited its charter that it be dissolved and extinct for the violation of the conditions of its Act of Incorporation.

In anticipation of this favorable judgment to the State, the Legislature adopted Act 309 of the Acts of 1852, by which it was provided that in the event of a final judgment of forfeiture being rendered in favor of the State of Louisiana against the Orleans Navigation Company in the suit now or recently pending on appeal in the

Supreme Court it shall be the duty of the Court in which said suit was instituted to proceed to the liquidation of the affairs of said Navigation Company in the following manner, to-wit: that the said Court shall appoint a liquidating commissioner, who shall forthwith proceed to take possession of the entire property of said company, real and personal, movable and immovable and to advertise and sell the same in block at public auction after 60 days advertisements to the highest bidder, payable 1/10 in cash and the remainder in equal annual instalments from 1 to 20 years, the credit portion of the price to be paid in bonds bearing legal interest divided into sums according to the directions of said commissioner and secured by mortgage and vendor's privilege on the property sold. It was further provided that it shall be the condition of said sale that if the

27 purchasers shall organize themselves into a corporation under the laws of this State for a term of 25 years for the purpose of carrying out and effecting all the improvements detailed and described in the report and plans known as Harrison's report and plans, including the constructions of a new Basin by the continuation of Canal Carondelet and Bayou St. John, of the depth and dimensions set forth in the said report and shall actually complete and effect all said improvements within the term of three years from the date of their charter then the said corporation shall be entitled to receive and exact all such tolls and revenues for the use of the said canal, bayou and road as the Orleans Navigation Co. was entitled to receive under its charter, provided that at the end of said term of 25 years, the State of Louisiana shall have option either of granting to said corporation a renewal of the right of receiving tolls for a second term of 25 years or of purchasing for itself the property and improvements of the company at the appraised value thereof and provided further that if the said term of 25 years be granted the whole property shall revert to the State of Louisiana at the end of said second term without any payment of compensation made to the said company. It was further provided that if the work and improvements to be made by the purchaser be not begun within six months and completed within five years, all the rights, titles and interest acquired by the said purchaser under the provisions of the Act, together with any improvements that may be made shall vest in and belong to the State.

Under the provisions of said act and the judgment of forfeiture aforesaid, a liquidator was duly appointed for the affairs of said company, to-wit: one Jacob Halsey, and under the order of the Court he exposed all of the property of the Orleans Navigation Co. for sale at public auction and adjudicated the same to James Currie, and on the 20th day of June 1852, by act before Richard Brennan, deed

28 was made to the said James Currie, for the said property, the said James Currie represented persons who thereafter organized the corporation called the New Orleans Canal & Navigation Co. the price of said sale being the sum of \$60,000 upon the terms of credit mentioned in the act of 1852.

In 1857 the Legislature evidently anticipating the inability of the New Orleans Canal & Navigation Company to carry out the

terms of the purchaser of said property as fixed in the act of 1852 adopted Act No. 160 of the Acts of 1857, to incorporate the Carondelet Canal & Navigation Company, of New Orleans, with an authorized capital stock of \$500,000.00.

That it was provided by Section 3 of said Act as follows: That this corporation shall have the right, power and authority to enter upon and take possession and control of the Carondelet Canal and Bayou St. John, for the purpose of completing the works of improvement thereon undertaken and commenced by the New Orleans Canal & Navigation Company, in pursuance of the provisions of Act of the Legislature of the State of Louisiana, entitled "An Act relative to the Orleans Navigation Company, the Bayou St. John and Canal Carondelet, approved March 12th, 1852; provided, however that the New Orleans Canal & Navigation Company shall not be affected by anything in this Act contained, in case the said company shall do and perform all things required to be done and performed by said act above mentioned, in the manner and within the time prescribed in and by said act; and provided, further, that in the event of the said New Orleans Canal & Navigation Company failing to perform the requirements of said Act, in the manner and within the time therein expressed and contemplated, the corporation hereby created shall, upon taking possession of the said Canal Carondelet and Bayou St. John, for the purposes contemplated in this Act arrange, adjust and liquidate the claims of the creditors

of the said New Orleans Canal & Navigation Company, and
29 of the stockholders in said company, for the money expended by them in and about the works and affairs of said company, connected with the said Canal Carondelet and Bayou St. John, in the manner hereinafter expressed and provided; further that the corporation hereby created may depart from the plan of the improvements of said Canal and Bayou, to which reference is made in said Act, designated as "Harrison's Plan", so far as said plan proposes a basin at the junction of said Canal with said Bayou and construction of a breakwater at the mouth of said Bayou at Lake Pontchartrain, in case a majority of the Board of Directors should determine that such works are not demanded by the interest, safety or convenience of commerce.

That it was provided by Section 4 of said Act as follows: That in the event of the failure of the said New Orleans Canal & Navigation Company to have ready and fully completed by the time required by law, all and everyone of the improvements contemplated by the Act aforesaid of March 12th, 1852, and specified in the plan known as "Harrison's Plan" and the consequent forfeiture of the charter, franchise and privileges of said New Orleans Canal & Navigation Company, (which forfeiture, sued for in the name of the State, shall be tried, in preference over all other cases by any of the District Courts of New Orleans, and also on appeal by the Supreme Court, and during the pending whereof, the said New Orleans Canal & Navigation Company shall be prevented from collecting any tolls or dues whatever,) the property of said company, real and personal or mixed, including the interest in the Canal Carondelet and Bayou St. John and the works and improvements done and effected thereon,

and all machinery, boats, tools, implements and material of whatsoever description necessary to be used in carrying on the works of the company, and real estate, acquired up to the present time, buildings and other property of said company in the City of New Orleans, shall be appraised at the true value thereof by a

30 Board of four appraisers duly sworn and appointed as follows: two by the hereby appointed commissioners, their successors or a majority of them, and two by the New Orleans Canal and Navigation Company; and in case said appraisers should not agree upon the value of said property, then any two of them may apply by motion in open Court to the Judge of the Fourth Division Court of New Orleans, and said Judge shall forthwith appoint an umpire; and said appraisers, or a majority of them, shall make a due report of their appraisement and said report shall be final and conclusive as soon as duly filed by them in the office of the Commissioners appointed by the Present Act.

That it was provided by Section 5 of said Act as follows: That upon a return of the report of said experts, the actual and bona fide debtors of the said New Orleans Canal & Navigation Company shall be ascertained, and an amount of stock in this corporation at par value and appropriated to the holder or holders of said debts, who may, at their opinion, receive the amount of their claims, respectively, in stock at par value thereof, or in cash. The excess of the appraised value of the property of the said New Orleans Canal & Navigation Company, after providing for the payment of the debts of said company as aforesaid, shall be accounted for in the stock of the new corporation at its par value to be issued to the holders of the stock in the said New Orleans Canal & Navigation Company, pro rata, according to the amount which each of said stockholders has actually paid on the amount of stock held by him in the said New Orleans Canal & Navigation Company; provided, that inasmuch as the said New Orleans Canal & Navigation Company has issued to Edward H. Durrell and James Currie, five hundred shares of stock which by contract was to be unassessable for the works and improvements undertaken by said company, and has also, in pursu-

31 ance of an amendment of the charter of said company adopted November 25th, 1854, according to law, created and set apart a portion of stock to which preference has been given, the holders of said unassessable stock shall receive one-tenth part of said surplus after providing for the debts of said company in the manner aforesaid and the holder of said preferred stock shall receive eighty dollars per share, to be divided pro rata; the remainder of said stock shall be divided pro rata amongst the holders of the ordinary stock of said company.

Under the provisions of this Act the Carondelet Canal & Navigation Company and the New Orleans Canal & Navigation Company entered into an agreement of sale and compromise by Notarial Act before Eusebe Bouny, dated 3rd, day of July 1857, a certified copy of which act is hereto annexed and made part of this answer. By the terms of said Act the New Orleans Canal & Navigation Co., sold all of its property to the Carondelet Canal & Navigation Co. for and in consideration of the delivery to it of 1,000 shares of the stock of

the Carondelet Canal & Navigation Company, full paid and not subject to assessment and for and in consideration of the assumption by the Carondelet Canal & Navigation Co. of the balance due on the purchase price of said property, to-wit: the sum of \$49,680.00, represented by the bonds of the purchaser of said property at the liquidator's sale aforesaid.

It was provided by Section 20 of the Act of 1857 that the Carondelet Canal & Navigation Company, should have an existence for and during the term of 25 years from and after the 17th, day of October, 1857, subject to the proviso that the State of Louisiana should have the right to take possession of said Canal Carondelet and Bayou St. John and all the property and improvements therewith connected at the expiration of said term should the Legislature determine to do

32 so, upon paying to the corporation the value of said property to be appraised by five competent persons as experts, two to be appointed by the corporation and two by the Governor and the four themselves to appoint a fifth. It was further provided that in the event that the State shall not determine to take possession of said property, then the corporation shall be in existence for 25 years from and after the expiration of the term mentioned; and at the end of such second term of 25 years, the said property may still become absolutely the property of the State of Louisiana and no compensation required to be made to the corporation.

Both the State of Louisiana and the incorporators of this Act found it impossible to raise the capital to carry out the provisions of the charter of 1857, the objection thereto being the clause last above quoted, that at the end of 50 years all of the property should revert to the State without any compensation and thereupon in the year 1858, the Legislature adopted Act No. 74 of that year giving the said Carondelet Canal & Navigation Co. extensive additional grants, one of said grants being a right to construct a railroad along the canal and another of said grants being an exemption of the property from taxation during the period of fifty years.

It was provided in Section 4 of said Act that said company shall enjoy corporate succession during 50 years from the date of the Act, after which time it may revert to the State upon due compensation being made, according to award by three commissioners, one appointed by the Governor, one by the Company and the third by any Court of Record in New Orleans.

And further answering defendant avers that it appears by the foregoing legislation and acts of the State that the State of Louisiana never at any time claimed any right, title or ownership in and to the Canal Carondelet and the improvements thereon, and in and to the Bayou St. John and the improvements thereon, and in and to

33 the Basin and improvements thereon, made by Orleans Navigation Company, and its successors; and that whatever rights the State has in and to this property are derived only from the contract rights existing between the Carondelet Canal & Navigation Company and the State of Louisiana as defined in the Acts of 1857 and 1858 and

This defendant avers that the said Statutes of 1857 and 1858 constitute a contract between the State of Louisiana and the Carondelet

Canal & Navigation Co., protected from impairment by the Constitution of the United States and that the State of Louisiana neither by suit nor otherwise can in any manner impair the obligation of said contract or take the property of this defendant in the said canal, basin and in the Bayou St. John, without making to this defendant the compensation agreed to be made in the said contracts. And in further support of the defendant's plea that the State of Louisiana claimed no title to said property.

Defendant avers that by Act No. 86 of the Acts of 1884 the Legislature of the State of Louisiana attempted to repeal the Charter of the Carondelet Canal & Navigation Company, as set forth in Act 160 of 1857 and in Act 74 of 1858, and in the said act of repeal provided for the appointment of experts to appraise and value the property of the Carondelet Canal & Navigation Co. This statute was declared to be unconstitutional and void by the Supreme Court of the State of Louisiana in the case of Canal & Navigation Co. versus Tedesco reported 37 Annual p. 100.

Further answer- defendant avers that in accordance with the provisions of its charter, by a meeting of the stockholders regularly called on March 10th, 1908, the date of the expiration of its charter under the Act of 1858, defendants herein were appointed liquidators of the said company, and the said stockholders named and appointed Philip Werlein as their commissioner under the Act of 1858. That thereafter due notice of the appointment of this commissioner

34 was conveyed to the Governor of the State of Louisiana and the Governor was asked to appoint the Commissioner on behalf of the State and to join the liquidators in an application to the Civil District Court for the appointment of the third commissioner, all of which applications and notices the Governor of the State of Louisiana ignored and made no answer thereto; and

Further answer- defendant avers that Act No. 161 of the Acts of 1906, entitled to provide for the appointment of a board of Control to assume the management of Bayou St. John and the Carondelet Canal and to provide for their powers and duties can be construed as an act authorizing the said Board of Control to take possession of the property of the Carondelet Canal & Navigation Company, without making the compensation provided for in Act of 1858, then that the said Act No. 161 is in violation of that clause of the Constitution of the United States, which prohibits the State from impairing the obligation of a contract and also in violation of the 14th Amendment to the Constitution of the United States as a taking of the defendant's property without due process of law; and

Further answering respondent says that under the provisions of Article 105 of the Constitution of 1852, which was in force at the time the Acts of 1857 and 1858 were passed, it was provided that no vested rights should be divested unless for purposes of public utility and after adequate compensation previously made.

Defendant avers that the Acts of 1857 must be interpreted with reference to said Article of the Constitution and that the right of the State to take a reversion of the property of the Carondelet Canal & Navigation Company was subject to its obligation to make previous compensation before such taking could be had; and

35 Defendant further avers that the same provision is contained in Article 166 of the Constitution of 1898 and in Article 167 of the Constitution of 1898; and that in no event could the State be authorized to divest the vested rights of this defendant or to take its property for a public purpose without previous compensation therefor and that such taking of defendant's property, without previous compensation therefor would not only be a violation of said Articles of the Constitution of the State of Louisiana, but also in violation of the 14th Amendment to the Constitution of the United States, as such taking without previous compensation would be a depriving this defendant of its property without due process of law; and

Further answering defendant avers that the State of Louisiana never spent a dollar upon the Carondelet Canal, the Basin or the Bayou St. John, but that the Carondelet Canal & Navigation Company and its predecessors have expended in enlarging, widening, deepening and improving the Bayou St. John, the Canal Carondelet and the Basin thereto attached, a sum exceeding \$750,000.00, and that the State by no device whatsoever either by the Act of its Legislature, or by the Act of its Attorney General, or by the Act of its Courts, can deprive this defendant of its rights in said property as granted to it and its predecessors under the authority of the United States and of the State of Louisiana, without impairing the obligation of the contract between the State of Louisiana and this defendant and without taking this defendant's property without due process of law in violation of the Constitution of the State of Louisiana, to-wit: Article 105 of the Constitution of 1852 and Articles 166 and 167 of the Constitution of 1898 and in violation of paragraph 1 of Section 10, of Article 1, and of the 14th, Amendment to the Constitution of the United States; and

Further answering defendant avers that upon the faith of the validity of the Act of 1858 its capital stock was subscribed and expended in improving the Canal Carondelet, the Basin and the Bayou St. John, and that at no time was any suggestion
36 ever made that the said act in any respect violated the Constitution of the State, and that it was left to the learned Attorney General who brought this suit to raise this question without any authority from the Legislature, and that even if the Legislature should attempt to raise such a question the State of Louisiana would be estopped and debarred from making this claim at the end of 50 years under the circumstances of this case; and

Further answering defendant avers that this claim of the Attorney General that the Act of 1858 is in violation of Articles 108 and 109 of the Constitution of 1852 is without merit in law or in fact and is a legal vagary of the learned Attorney General, devised by him for the purpose of attempting to enable the State to get the defendant's property without paying for it, contrary to its solemn obligation as solemnly declared by the Supreme Court of the State of Louisiana in the case of Carondelet Canal & Navigation Co. vs. Parker, reported in 29th Annual page 430, where, speaking for the whole Court, Mr Justice De Blanc used the following Language:

"Plaintiff has fairly complied with every obligation of its charter. It has enlarged, deepened, straightened, and cleaned the bayou; it has to constantly struggle against the damaging effects of the winds and waves on the embankment and the channel built and dug in the lake. It has aided and increased, to an incalculable extent, the movement of navigation on and through said lake and bayou; it has lessened the expenses and perils of that navigation; it has created an additional harbor, and is now claiming, not an import, not a tax, not a duty, but a reasonable compensation for a real service, for a service already rendered and which the company continues to render.

37 "The State in granting a charter to plaintiff, and plaintiff in the exercise of its privileges under the charter, have violated no constitution, State or Federal, invaded no highway, interfered with no right, private or public; but, on the contrary, the State by her law, the company by its efforts, have opened to vessels of every nation another, safe, and important route, and those who take that route are bound in law and in equity, to pay for the use of improvements which are the result of not less than seventy two years of an active, costly, and intelligent labor.

"To the protection of that invaluable and honest enterprise the faith of the republic and the faith of the State are pledged."

And further answering defendant avers that, it has always been ready and willing to comply with the provisions of the Charter of 1857 as amended by the Charter of 1858 and is now ready and willing to deliver the Canal Carondelet, and the Basin, and the Bayou St. John to the State of Louisiana upon the payment to it of the value of said property as fixed by an award of three commissioners, one appointed by the Company, one by the Governor and one by the Civil District Court for the Parish of Orleans, and that until this award is made and the amount thereof paid, it has the right to hold and enjoy the said property.

For these reasons the defendant denies that it is under any obligation to make any accounting to the State for the rents and revenues of said property in its possession.

Further answering defendant avers that the triangle mentioned in the plaintiff's petition as having been sold with the reservation of the rights of the State to the New Orleans Terminal Co. and the proceeds thereof deposited in the Hibernia Bank & Trust Company was part of its private property, not connected with or making part in any respect of the said Canal, and that in no event would

38 the State of Louisiana be entitled to the proceeds of the sale of property.

Wherefore the defendant prays that the plaintiff's demand may be rejected with costs.

(Signed)

FARRAR, JONAS, GOLDSBOROUGH,
GOLDBERG,
SAUNDERS, DUFOUR & DUFOUR, &
BENJ. T. WALDO,

Attys for Defendants.

Civil District Court, Parish of Orleans, Division C.

No. 89798.

THE STATE OF LOUISIANA

vs.

THE CARONDELET CANAL & NAVIGATION COMPANY OF NEW ORLEANS;
A. J. DAVIDSON, J. H. ELLIOT, AND HANS WIDMER, Liquidators
Thereof.

*Testimony and Notes of Evidence Taken in Open Court on the Trial
on Monday, March 7th, 1910, Before the Hon. E. K. Skinner,
Judge Presiding, by A. E. Oliveira, Stenographer ad hoc.*

Present:

For the State of Louisiana: Hon. Walter Guion, Attorney General.
For the Defendants: Messrs. E. H. Farrar, B. T. Waldo and Wm.
C. Dufour.

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39

Agreement.

It is agreed that all Statutes of the United States, and of the State of Louisiana, and maps and blue prints, as well as all opinions and decrees of the Supreme Court that may be offered in evidence by either plaintiff or defendant, shall not be copied in the record, but shall be read and considered as part of the record, from the original books; and in case of an appeal this agreement shall be to the same effect.

Evidence on Behalf of the State of Louisiana.

By the ATTORNEY GENERAL:

The State of Louisiana, Plaintiff, offers in evidence Act of Congress, February 10th, 1809, appropriating \$25,000 for the Carondelet Canal, Old Basin and Bayou St. John, found in volume 2, page 516, United States Statutes at Large, and entitled "An Act to defray the expenses for the purpose of deepening and extending "to the river the Canal Carondelet.

The State of Louisiana next offers in evidence, Act of Congress, of April 26th, 1816, entitled "An Act establishing a port of Delivery, at

"the town of Bayou St. John, and making Bayou St. John, a *point of entry*"—found in volume 3 United States Statutes Laws, page 571; and also in compilation of United States Statutes Laws by Dunlop, from 1789 to 1856, at page 539.

The State of Louisiana next offers in evidence Act of the Territorial Legislature of Louisiana, approved July 3rd, 1805, incorporating the Orleans Navigation Company, being entitled
40 "An Act improving inland navigation of the territory of Orleans."

The State of Louisiana next offers in evidence Act of the Territorial Legislature of Louisiana, approved March 18th, 1809, to be found at page 56, Chapter 23 of the Acts of 1809, declaring that the improvement of the Orleans Navigation Company shall not extend to Bayou Plaquemine.

The State of Louisiana next offers in evidence Act of the Legislature of the State of Louisiana, approved March 3rd, 1814, declaring that the operation of said company shall be confined and restricted to inland navigation of the Island of Orleans.

The State of Louisiana next offers in evidence Act of the Legislature of the State of Louisiana, of 1835, page 206, approved April 1st, 1835, directing proceedings to be taken against the Orleans Navigation Company for failing to keep the navigation and Bayou in good order, entitled: "An Act directing the Attorney General to institute suit against the Orleans Navigation Company."

The State of Louisiana next offers in evidence Act No. 244 of the Legislature of the State of Louisiana, of the year 1847, approved May 3rd, 1847, and found at page 202, entitled "An Act in relation to the Orleans Navigation Company, directing the Attorney General to bring suit to forfeit the Charter of the Orleans Navigation Company, and which suit resulted in the forfeiture of its charter, reported
41 in the 7th Annual, page 679, as well as the judgment, opinion and decree of the Supreme Court of the State of Louisiana, in that case, reported in the 7th Annual, page 679.

The State of Louisiana next offers in evidence Act No. 309 of the Legislature of the State of Louisiana, approved March 18th, 1852, and found at page 209, entitled: "An Act relative to the Orleans Navigation Company, and directing that in case of forfeiture of Charter a liquidator should be appointed to take possession of the entire property of the company, and providing for the formation of a corporation for a period of twenty five years, for the purpose of carrying out the improvements of the bayou and canal, as shown in Harrison's Reports, and to receive and exact all such tolls and revenues as the Orleans Navigation Company was entitled to receive under its Charter.

The State of Louisiana next offers in evidence Act No. 160 of 1857, found at page 143 of the Acts of the Legislature of the year 1857, entitled: An Act to incorporate the Carondelet Canal & Navigation Company of New Orleans.

The State of Louisiana next offers in evidence a certified copy of an Act of Sale passed before Richard Brennan, Notary Public, on the 28th day of June, 1852, transferring to James Curry and others

all of the property, rights and franchises of the Orleans Navigation Company, marked "X 1".

The State of Louisiana next offers in evidence certified copy of the Act of Incorporation of the New Orleans Canal & Navigation Company, passed before John Broadhead, a Commissioner for Louisiana, in the State of Pennsylvania, on the 19th of October, 1852, 42 and recorded in the City of — Orleans, on the 27th of October 1852, in the Mortgage Book in Society Book No. 3, page 2, marked "X 2".

The State of Louisiana next offers in evidence a certified copy of an Act of Sale by the New Orleans Canal & Navigation Company to the Carondelet Canal & Navigation Company, passed on the 3rd of July, 1857, before Eusebe Bouny, Notary Public, marked X 3.

The State of Louisiana next offers in evidence the petition and answer in the suit entitled: Henry Singer vs. Carondelet Canal & Navigation Company, and Bertrand Saloy, No. 13631 of the Docket of the Civil District Court for the Parish of Orleans, and reported in the 39th Annual, page 478, and marked respectively X 3 1,— X 4 and X 5.

The State of Louisiana next offers in evidence the record in the suit of the Carondelet Canal & Navigation Company vs. the City of New Orleans, No. 30166 of the docket of the Civil District Court for the Parish of Orleans, and reported in the 44th Annual, page 394, marked X 6.

The State of Louisiana next offers in evidence Act of the Legislature of the State of Louisiana, being Act 161 of 1906, entitled "An Act to provide for the appointment of a Board of Control to assume management of Bayou St. John and the Carondelet Canal, and to provide for their powers and duties".

Admission.

It is admitted by all parties to this suit that George Eicke, L. R. Sassinot and L. E. Rabouin, of the Parish of Orleans, and 43 C. C. Murray, of the Parish of Livingston, and Oscar Brugier, of the Parish of St. Tammany, are the duly appointed, commissioned and sworn members of the Board of Control, under the provisions of Act 161 of 1906.

Admission.

It is admitted that the annexed letter, dated March 5th, 1909, is a copy of the letter addressed by Walter Guion, Attorney General to A. J. Davidson, J. H. Elliott and Hans Widner, Liquidators of the Carondelet Canal & Navigation Company, and that the original of this letter was duly received by the said Commissioners, said copy being marked, X 7.

Admission.

It is further admitted that the annexed letter, dated March 13th, 1909, was the answer addressed to the Attorney General by the

counsel of the Commissioners in response to the letter aforesaid from the Attorney General, marked X 8.

The State of Louisiana next offers in evidence Senate Concurrent Resolution, No. 2, being entitled: Act No. 77 of the Acts of the Legislature of Louisiana, of the year 1906, approved July 4th, 1906.

Admission.

It is admitted that under the provisions of the contract ratifying this Act, \$3,000. for the purchase of the triangle in said Act mentioned was duly deposited under the terms of said contract and said Act in the Hibernia Bank and Trust Company, where the same now remains, awaiting final determination of this case.

44

Admission.

It is admitted that the Board of Commissioners, appointed under Act No. 161 of 1906, have been duly organized, and that they have by Resolution called upon the Attorney General of the State to recover and deliver to them the property sued for in this case.

Admission.

It is admitted by the Attorney General, representing the State of Louisiana, that no offer or tender has been made by the State of Louisiana, or by the Board of control of the Carondelet Canal & Old Basin & Bayou St. John of any amount in consideration of the delivery over to the State of Louisiana of any of the property claimed in this suit.

By the ATTORNEY GENERAL:

This closes the evidence in chief on behalf of the State of Louisiana.

Evidence for Defendant.

By Mr. FARRAR:

The Defendants offer in evidence, under the foregoing agreement, the same Statutes of the State of Louisiana, and the same Acts of Congress offered by the plaintiff; and in addition to those statutes the defendants offer in evidence, under the same agreement, Act of Congress, approved March 3rd, 1807, contained in Second Statutes-at-Large, page 440.

The defendants also offer in evidence Act of Congress, approved April 18th, 1814, granting certain lands and improvements
45 thereon to the Orleans Navigation Company, found in the Sixth Statutes-at-Large, Page 144.

The defendants next offer in evidence Act of Congress, approved April 16th, 1816, granting to the Orleans Navigation Company the

site of the Charity Hospital, found in 6th Statutes at Large page 161.

Defendants next offer in evidence Resolution of the Legislature of the State of Louisiana, approved February 16th, 1821, directing the Attorney General to bring suit for forfeiture of the Charter of the Orleans Navigation Company, found in the Acts of 1821, at page 132.

Defendants next offer in evidence Act of the Legislature of Louisiana, No. 74 of 1858, and found in the Acts of 1858 at page 46.

By the ATTORNEY GENERAL:

The State of Louisiana objects to the introduction of Act 74 of 1858, as well as to all other evidence of the same character, for the purpose of showing that the Carondelet Canal & Navigation Company is the owner of the Carondelet Canal, of the Old Basin and Bayou St. John, as well as of any property or improvements connected therewith, or appertaining thereto, on the ground that the defendant in this case, the Carondelet Canal & Navigation Company is without right to make any claim of title to any of this property, except, perhaps, such property as may fall within the designation of a railroad, layouts and basins, and half moons, referred to in Act 74 of 1858, for the reason that in suit No. 30166, of the docket of the Civil District Court for the Parish of Orleans, entitled: Carondelet Canal & Navigation Company vs. The City of New Orleans, and the suit No. 13631 of the Civil District Court for the Parish of Orleans, entitled: Henry Singer vs. Carondelet Canal & Navigation Company, and B. Saloy, the defendant in this case, the Carondelet Canal & Navigation Company claimed that it held this property as lessees from the State of Louisiana, and that it would be and is now estopped from now claiming to be the owners of any of this property by reason of this judicial admission.

By the COURT:

The Court rules to let the objection go to the effect and not to the admissibility of the evidence. The reason for so ruling is to allow the whole of the record to go before the Supreme Court.

By the ATTORNEY GENERAL:

To which ruling of the Court the State of Louisiana excepts reserves a bill, and has this note made on the record in lieu of a formal bill of exceptions.

By Mr. FARRAR:

It is agreed that this objection, the ruling of the Court, and the exception reserved by the Attorney General to all similar testimony and documents hereafter offered in evidence by the defendants, this agreement being made to save the necessity of repeating the objection, and the ruling of the Court, and the reservation of a bill of exceptions, as each offer is made (and a bill of exceptions is considered

as reserved by the Attorney General to all such rulings of the Court) shall stand without the necessity of repetition.

47

By Mr. FARRAR:

The defendants next offer in evidence Act of the Legislature of the State of Louisiana, No. 86 of the Acts of 1884, entitled: "An Act to repeal Act No. 160, entitled "An Act to incorporate the Carondelet Canal & Navigation Company of New Orleans, approved March 16th, 1857; also, to repeal Act No. 74, entitled: "An Act relative to the Carondelet Canal & Navigation Company of New Orleans, approved March 10th, 1858; also to authorize the Governor to appoint experts to value the property of the Carondelet Canal & Navigation Company; also, to direct the Governor to take possession of the Bayou St. John and canal Carondelet, and to appoint Commissioners to superintend the same to be found in the Acts of 1884, page 113.

The defendants next offer in evidence Concurrent Resolution No. 12 of the Legislature of 1886, found in the Acts of 1886, at page 21, instructing and requiring the Attorney General to institute, without delay, legal proceedings against the Carondelet Canal & Navigation Company for the forfeiture of its Charter, and to bring its property into the possession of the State.

Admission.

It is admitted that under this Concurrent Resolution no suit was ever brought by the Attorney General of the State.

Defendants next offer in evidence a photographic copy, certified by the Clerk of the Supreme Court of Louisiana, of an ancient map among the archives of the Supreme Court of the State of Louisiana, marked "D 1."

48 Defendants next offer in evidence certified copy of an official map of Township 12 South Range 11, east, in the South Eastern District of Louisiana, as per survey of V. Sulakowski, approved June 22nd, 1872, by the Surveyor General of Louisiana, this map forming part of the record of the Circuit Court of the United States in the suit of Wheelock vs. the St. Louis & San Francisco Railroad Company, No. 13244 of the docket of said Court; and it is agreed that there shall be now substituted for this map a blue print of the same map, marked D 2.

By the ATTORNEY GENERAL:

Please note that my objection is to apply to all of this evidence.

By Mr. FARRAR:

The defendants next offer in evidence confirmation of the claim of Jean Baptiste Castillon to lands in the county of Orleans; being No. 308, and found in the American State Papers, Volume 2, No. 286. We offer so much thereof as refers to claims 8 and 9 by Castillon, which reads as follows:—

"Jean Batiste Castillon claims the following tracts of land situate

"in the county of Orleans, viz: 8th: A tract situate on the left side
 "of Bayou St. John road, in going from the City, containing six
 "arpents in front, and extending back to the lands of Jean Gravier,
 "and bounded on one side by lands of Mr. Griffon and on the other
 "by the lands of Mr. Castanedo.

"9th: A tract of land situate on the Bayou St. John, containing
 "seven hundred and eighty eight superficial arpents and bounded on
 "one side by the lands of Mr. Beveiniseaux, and on the other by the
 "lands of Metairie.

49 "It appearing that the eighth tract claimed was actually
 "inhabited and cultivated on the 20th December 1803, and
 "for more than ten consecutive years prior thereto, the Board con-
 "firms the claim.

"The 9th tract of land now claimed, it appears was granted by the
 "French government in 1758, to Mr. Mouleou, under whose title
 "the present claimant holds. The Board confirms the claim".

Defendants next offer in evidence confirmation of claim of Francis J. LeBreton Dorgenois to lands in the county of Orleans; being No. 376, and found in the American State Papers, Volume 2, page 283, which reads as follows:—

"No. 376. Francis J. Lebreton Dorgenois claims a tract of land
 "situate in the county of Orleans, on the left side of the Bayou St.
 "John road, containing two arpents in front, and extending back
 "as far as within sixty feet of the canal Carondelet, and bounded by
 "the lands of Domingo Fleitas and Daniel Clark.

"It appears that the land now claimed was actually inhabited and
 "cultivated on the 20th of December 1803, and that the same was
 "continually inhabited and cultivated by those under whom the
 "present claimant holds for more than ten consecutive years next
 "preceding. Confirmed".

Defendants next offer in evidence confirmation of claim of Daniel Clark to lands in the county of Orleans; being No. 126, and found in the American State Papers, Volume 2 page 267. Which reads as follows:—

"No. 126. Daniel Clark claims a tract of land, situate near the City
 "of New Orleans, containing twelve arpents in front on the road

50 "leading to the Bayou St. John, and varying in depth,
 "bounded on the North by the road aforesaid, on the South
 "by the canal Carondelet, on the East by the land of Joseph

"Suarez, and on the West by the lands of Louis Blanc, and on the
 "Bayou St. John aforesaid.

"It appears to the Board, from the Deed of Conveyance dated 3rd
 "day of September, 1793, executed by Andreas Almonaster, that he
 "conveyed part of the lands in question to Louis Antoine Blanc;
 "and it appearing, from a patent of complete title exhibited, that
 "another part of said land was granted by the Spanish Government
 "to Nicholas Vidal, on the 18th day of April, 1800; and it appear-
 "ing also from the deeds and conveyances exhibited to the Board,
 "that they, the said Blanc and Vidal, have conveyed to the claimant
 "the whole of the land now claimed by him, the Board do hereby
 "confirm him in his said claim".

Defendants next offer in evidence confirmation of claim of Do-

mingo Fleitas to lands in the county of Orleans; being No. 151, and found in the American State Paper-, Volume 2, page 284, which reads as follows:—

"No. 151. Domingo Fleitas claims a tract of land, situate in the county of Orleans, on the Bayou St. John road, at the distance of a mile from the City of New Orleans, containing fifty three toises and one foot in front, on said road, and extending back as far as the land of Gravier, but varying in its width towards the rear, and bounded on the East by the land of Madame Bertrand and vacant lands, and on the West by land of Joseph Suarez and vacant lands.

"It appears that part of this land, viz., the front and
51 "depth, as far back as the letters A, B, on the plat executed by Charles Trudeau, late Surveyor General, dated May 9th, 1801, was actually inhabited and cultivated on the 20th of December, 1803, and for more than ten consecutive years prior thereto; so much the Board confirm. The balance of the land now claimed as regularly granted on the 20th day of May, 1801, by the Intendant General, in favor of Charles Guardiola, under whom the claimant holds; but the Board, agreeable to the Act of Congress are not authorized to confirm the title to said party".

Defendants next offer in evidence the opinion and decree of the Supreme Court of the State of Louisiana in the case of Fleitas vs. Mayor and others, as reported in 1st Martin, New Series, page 430.

Defendants next offer in evidence copy of the opinion and decree of the Supreme Court of Louisiana in the case of Kenton vs. Pontalba, contained in the 1st Robinson, page 343.

Defendants next offer in evidence confirmation of lands in the county of Orleans to Charles Griffon; being No. 357 and found in the American State Papers, Volume 2, page 283, which reads as follows:—

"No. 357. Charles Griffon claims a tract of land, situate in the County of Orleans, on the South side of Bayou St. John road, at the distance of about ten arpents from the City of New Orleans, containing two arpents in front, and extending in the depth as far as the lands of John Gravier, and bounded on the north west by land of J. B. Castillon, and on the south east by those of Claude Treme, and by lands claimed by the City as commons.

52 "It appears that this land was actually inhabited and cultivated on the 20th day of December, 1803, and that the same was continually inhabited and cultivated by the claimant or those under whom he claims, for more than ten consecutive years next preceding. Confirmed."

The defendants next offer, produce and file in evidence a certified copy of a Notarial Act passed before Stephen de Quinenes, Notary Public, on the 8th day of July, 1811, which is a transfer by Francis J. Lebreton Dorgenois, Daniel Clark, through agents Chew & Ralph, and others, and a free negress named Marie Michel, represented by Francis J. Lebreton Dorgenois, of proprietors of lands situated on and beyond the canal Carondelet, marked D 3 with a translation of said Act for the convenience of the Court, marked D 4.

The defendants next offer, produce and file in evidence, certified copy of an act of transfer of lands along the Carondelet Canal by Jean Marie Griffon and others to the Orleans Navigation Company, of date January 16th 1828, as per act before J. R. Stringer, Notary Public, Marked D 5.

The defendants next offer, produce and file in evidence certified copy of the record of the case of the State of Louisiana vs. Orleans Navigation Company, being record No. 3759 of the late district court for the First Judicial District for the State of Louisiana, being also record No. 642 of the Docket of the Supreme Court of the State of Louisiana, together with the opinion and decree of the Supreme Court of the State of Louisiana, in said case, marked D 6.

53 By the ATTORNEY GENERAL:

In addition to the foregoing objections already made, on the ground that the defendant company is without authority to offer any evidence tending to establish title to the Carondelet Canal, Bayou St. John and the Old Basin, or any of the property claimed by the State of Louisiana, the additional objection is that this copy now offered is not a copy from the original records in the Clerk's Office.

By Mr. FARRAR:

We could not find the original record in this Court.

By the ATTORNEY GENERAL:

Counsel for the defendants having informed the Court and Counsel for the State of Louisiana that diligent search has been made in the Clerk's office, among the archives of that office, and that the original record could not be found, counsel for the State of Louisiana now withdraws his objection made of its being not the best evidence.

By Mr. FARRAR:

The defendants next offer in evidence the argument of the Attorney General of the State of Louisiana, in the Supreme Court of the State of Louisiana, made in this case, and reported in 11th Martin Old Series.

By the ATTORNEY GENERAL:

Objected to on the additional ground that the argument of the Attorney General of the State of Louisiana at that time is not evidence.

By Mr. FARRAR:

It shows the position that the State took and the claim that the State made at that time, and is in support of an averment in our answer.

By the COURT:

Let the objection go to the effect.

By the ATTORNEY GENERAL:

54 To which ruling of the Court the State of Louisiana excepts, reserves a bill, and has this note made in lieu of a formal bill of exceptions.

By Mr. FARRAR:

The defendants next offer in evidence the opinion and decree of the Supreme Court of the State of Louisiana, in the case of the State of Louisiana vs. Orleans Navigation Company, reported in 7th Annual, page 679.

By Mr. FARRAR:

The defendants next offer, produce and ask to be filed in evidence, a certified copy of an act of transfer and sale by Archibald Robinson Currie and others to the New Orleans Canal & Navigation Company, being certified copy of an act passed before Richard Brennan, Notary Public, on the 26th of October 1852, and marked D 7.

By Mr. FARRAR:

The defendants next offer in evidence the whole of the original record in this Court, No. 6526 of the Docket of the late Third District Court, transferred under No. 92265 to the docket of the Civil District Court for the Parish of Orleans, styled "New Orleans Canal & Navigation Company vs. the City of New Orleans", together with the opinion and decree of the Supreme Court of the State of Louisiana in said case reported in 12th Annual, page 364, marked D 8.

By Mr. FARRAR:

The defendants next offer in evidence the whole of the record in this court, No. 8122, styled "Carondelet Canal & Navigation Company vs. P. L. Bouny, Tax Collector", marked D 9.

55 By Mr. FARRAR:

The defendants next offer in evidence the opinion and decree of the Supreme Court of Louisiana, in the case of Carondelet Canal & Navigation Company vs. Parker, as reported in the 29th Annual, page 434.

By Mr. FARRAR:

The defendants next offer in evidence the opinion and decree of the Supreme Court of Louisiana in the case of the Carondelet Canal & Navigation Company vs. Tedesco, as reported in the 27th Annual, page 100.

By Mr. FARRAR:

The defendants next offer in evidence the opinion and decree of the Supreme Court of Louisiana in the case of Singer vs. Carondelet Canal & Navigation Company, as reported in the 29th Annual, page 483.

By Mr. FARRAR:

The defendants next offer in evidence a certified copy of extracts from the Minutes of the stockholders of the Carondelet Canal & Navigation Company, held on March 10th, 1908, and marked D 10.

By Mr. FARRAR:

The defendants further offer in evidence certified copy of extracts from the Minutes of the meeting of the stockholders of the Carondelet Canal & Navigation Company, held March 10th, 1908, showing the election of Philip Werlein as Commissioner to be appointed by the Carondelet Canal & Navigation Company under Section 4 of Act No. 74 of 1858 marked D 11.

56 By Mr. FARRAR:

The defendant- next offer in evidence copy of letter of date March 10th, 1908, to Governor Newton C. Blanchard, from Farrar, Jonas, Krutt-chnitt & Goldberg, Benjamin T. Waldo and Miller, Dufour & Dufour, notifying the Governor of the election of liquidating commissioners, and a commissioner, to fix award and compensation to the company, asking the Governor to name the State's commissioner of award, and to direct the Attorney General to join the Liquidators in a petition to the Court to name the third Commissioner of Award.

It is admitted that this is a correct copy of said letter, transmitted by the signors to Governor Blanchard, and the same is marked D 12.

By the ATTORNEY GENERAL:

Counsel for the defendants having stated that no reply was ever received from Governor Blanchard in answer to this communication, the Attorney General representing the State of Louisiana, admits that no answer was received to this communication.

By Mr. FARRAR:

The defendants next offer in evidence certified copy of act of sale and compromise between Joseph Genois, Jr. and Bernard Genois, to the Orleans Canal & Navigation Company, being a certified copy of said act, passed before Adolphe Boudousquie, Notary Public, on May 27th, 1853, marked D 13.

By Mr. FARRAR:

The defendants next offer in evidence opinion and decree of the Supreme Court of Louisiana, together with the arguments of counsel in the case of the Mayor of the City of New Orleans vs. the Orleans Navigation Company, reported in 1st Martin, Old Series, page 23 et seq., continued to page 269, and the same case continued to 2nd Martin, page 10, and further continued in 2nd Martin to page 214.

By the ATTORNEY GENERAL:

In addition to the objections already urged, counsel for the State of Louisiana desires to add the additional objection that the arguments of counsel in a case form no part either of the record of the case or the evidence and that the argument of counsel is entirely irrelevant and is not admissible as evidence in any case.

By Mr. FARRAR:

In answer to this counsel for defendants state that these opinions

and arguments are offered merely as a part of the ancient history of this canal.

By the COURT:

I think so myself; let the objection go to the effect.

By the ATTORNEY GENERAL:

To which ruling of the Court counsel for the State of Louisiana excepts, reserves a bill, and has this note made in lieu of a formal bill of exceptions.

By Mr. FARRAR:

The defendants offer in evidence opinion and decree of the Supreme Court of the State of Louisiana, in the case of the Carondelet Canal & Navigation Company vs. the City of New Orleans, and reported in the 44th Annual, page 397.

By Mr. FARRAR:

58 The defendants offer, produce and file in evidence certified copy of the Minutes of a meeting of the Board of Directors of the Carondelet Canal & Navigation Company, held on March 1st, 1858, marked D 14.

By Mr. FARRAR:

The defendants offer, produce and file in evidence certified copy of the Minutes of a meeting of the Board of Directors of the Carondelet Canal & Navigation Company, held on the 8th of March, 1858, marked D 15.

WILLIAM P. NICHOLLS, who being first duly sworn by the Court on behalf of the defendants, testified as follows:—

By the ATTORNEY GENERAL:

What do you desire to prove by this witness?

By Mr. FARRAR:

To prove two facts; to prove how much this Company collected on its stock subscription prior to the passage of the Act of 1858, and how much it collected after the passage of that Act of 1858. I also want to prove what this Company had spent since the passage of the Acts of 1857 and 1858 in the improvement of this canal and Bayou and not for the purpose of establishing any claim against the State for that amount, and not for the purpose of binding the State for the amount so expended, because the amount that we have expended has got nothing to do with the amount which we are going to get from the State. If we are entitled to get anything from the State we are entitled to get it on the basis of an appraisement to be made as provided in that statute, and these appraisers will find out what improvements we have made on this canal and what we are entitled to under the terms of that Act. I confess, and I think the Attorney General will agree with me, that this is a complicated

59 question to go into at this time, and I do not propose to bind the State in any way, to establish any claim against the State by making this proof.

By the ATTORNEY GENERAL:

I feel compelled to object to the introduction of any evidence by the defendant company tending to establish the amount of money expended by the company on this canal or in acquiring property that might be regarded as attached to it or appertaining to it, because any such evidence is inadmissible under the prayer of the answer, and would be totally irrelevant to the issue now presented to the Court, and I cannot see under what theory that evidence would be admissible. I object to it for the reason that it is inadmissible under the pleadings, irrelevant and immaterial.

By the COURT:

I will admit the evidence in so far as it goes to maintain the plea of estoppel, and hold that it is irrelevant in so far as it extends further on that question.

By the ATTORNEY GENERAL:

Counsel for the State of Louisiana excepts to the ruling of the Court, reserves a bill, and has this note made in lieu of a formal bill of exceptions.

By Mr. FARRAR:

It is agreed that this objection applies to all of the testimony to be given by the witness on the stand, Mr. William P. Nicholls.

Direct examination by Mr. FARRAR:

Q. Mr. Nicholls how long have you been the Secretary of the Carondelet Canal & Navigation Company?

A. Since July, 1898.

Q. What connection have you had with the Liquidators since they were appointed?

60 A. Their Superintendent.

Q. Who has charge of the books and records?

A. I have.

Q. Of the books and records of the old Carondelet Canal & Navigation Company?

A. Yes sir.

Q. Have you made up, as requested by me, a statement as appears on those books, of the amount of money expended by the Carondelet Canal & Navigation Company on this canal since 1857 down to the date of the dissolution of the Company on March 10th, 1908?

A. Yes sir.

Q. I hand you this document and ask you if this is a correct transcript from the books of the Carondelet Canal & Navigation Company?

A. Yes sir, it is; from 1857 to March 10th, 1908; the first entry is August, 1857.

Q. Does this statement contain the items expended for movables or only items expended on the canal and bayou?

A. Only on the improvements of the bayou, canal and navigation; it don't include movables or real estate.

Q. Does it include any of the sums paid by the Carondelet Canal & Navigation Company to the Orleans Canal & Navigation Company?

A. No sir, that is carried in real estate, dredge boats, lighters and materials.

Q. Those items——

A. Yes; I mean the stock account.

Q. There has been offered in evidence here a notarial act of compromise whereby the Carondelet Canal & Navigation Co., paid its predecessor, the New Orleans Canal & Navigation Co. one thousand shares of its stock, full paid, not subject to assessment, and
61 also a sum of \$49,680.00 by the assumption of the bonded debt of that company;—do those two items figure in this statement here of the amounts expended by the Carondelet Canal & Navigation Company?

A. Those bonds do; they were afterwards assumed and paid by the company.

Q. But the one thousand shares of stock do not?

A. No sir.

Q. So that the indebtedness of the old company is included in this account?

A. Yes sir.

Q. Some forty nine thousand and odd hundred dollars with interest?

A. Yes sir.

By Mr. FARRAR:

In connection with the testimony of the witness we offer in evidence, this statement, marked D 16.

By the ATTORNEY GENERAL:

This is included in the bill of exceptions to the testimony of Mr. Nicholls.

By Mr. FARRAR:

Q. Have you made up from the books of the Carondelet Canal & Navigation Company a statement of the amount collected on stock subscription by the Carondelet Canal & Navigation Co., from 1857 on?

A. Yes; I have those.

Q. This statement is made up——

A. From the cash book of the corporation—from August 31st, 1857.

Q. This statement begins with a hundred thousand dollars?

A. Yes; one thousand shares of stock issued to the old Commissioners.

Q. And this statement that you hand me is——

62 A. A detailed statement from the books of the company.

By Mr. FARRAR:

In connection with the testimony of the witness we offer this statement marked D 17.

By the ATTORNEY GENERAL:

The bill of exceptions is also to include this offer.

Cross-examination by the ATTORNEY GENERAL:

Q. This first statement, concerning which you have given evidence, D 16, shows the words "expenditures charged to profit and loss account". Will you please tell me the expended of what company you had in mind?

A. The Carondelet Canal & Navigation Company.

Q. Are all of those expenditures taken from the Carondelet Canal & Navigation Company?

A. No sir, not all of them, only for those improvement accounts. The word operating account is there.

Q. But does this document D 16 show expenditures made by any other company except the Carondelet Canal & Navigation Company?

A. No sir, only the Carondelet Canal & Navigation Company.

Q. My reason for asking you is that there are no dates on this statement showing when the expenditures were made?

A. I think I testified to that.

By Mr. FARRAR:

Haven't you got a detailed statement of all of the consolidated accounts?

A. Yes sir.

By Mr. FARRAR:

General Guion, we can give you a consolidated statement of all of the accounts from which these extracts were made.

By the ATTORNEY GENERAL:

Q. What does this document D 17 represent?

63 A. Collections on account of capital stock. Here are all of the cash subscriptions by days and by months and years. In 1857 there was \$20,540.00 collected in cash.

Q. These are collections?

A. Yes sir.

Q. Made by the Company?

A. By the Company, taken from the cash book of the Company.

Q. What is this balance of \$214,873.25?

A. This is capital stock of the company shown on the books.

Q. Have you the books of the Carondelet Canal & Navigation Company?

A. Yes sir.

Q. From the time of its organization in 1857?

A. Yes sir, they are right here in Court.

By Mr. FARRAR: The defendant does not offer this evidence for

the purpose of establishing any money claim against the State of Louisiana at this time.

Admission: It is admitted that up to about thirty five years ago the office of the Carondelet Canal & Navigation Company was in a building at the head of the basin; that about thirty five years ago the office was removed to the triangle of ground bounded by Villere, Toulouse, Canal Carondelet and Robertson Street, being the same triangle of ground involved in the contract whereby it was sold, and the proceeds deposited in the Hibernia Bank & Trust Company.

It is further admitted, That Louis Gagnet was the Secretary of the Carondelet Canal & Navigation Company from its organization on the 18th of August, 1857, down to April 9th, 1866, and that

Louis Gagnet died on Feb'y 16th, 1885,

64 By Mr. FARRAR: Defendants offer in evidence the opinion and decree of the Supreme Court of the State of Louisiana in the case of Gagnet vs. The City of New Orleans, reported in the 23rd Annual, page 207.

By the ATTORNEY GENERAL: The State of Louisiana offers in evidence the opinion and decree of the Supreme Court of the State of Louisiana, in the case of the State of Louisiana vs. Orleans Navigation Company, reported in the 11th Martin, Old Series, at pages 143, 144, 148, 149, 151 and 329.

The State of Louisiana also offers in evidence the opinion and decree of the Supreme Court of Louisiana in the case of the City of New Orleans vs. Carondelet Canal & Navigation Company, reported in the 36th Annual, page 397.

The State of Louisiana also offers in evidence opinion and decree of the Supreme Court of Louisiana, in the case of the Carondelet Canal & Navigation Company vs. the City of New Orleans, reported in 38th Annual, page 309.

By the ATTORNEY GENERAL: The State of Louisiana closes.

NOTE:—Evidence closed; case continued to Tuesday, March 8th, 1910, for argument.

A true and correct report.

(Signed)

A. E. OLIVEIRA,
Stenographer.

Endorsed: No. 89798 Civil District Court, Div. C. State of Louisiana vs. Carondelet Canal & Navigation Co. Testimony and Notes of Evidence. Taken in open Court, March 7th, 1910. No. 89798 Civil District Court, Parish of Orleans. Filed 3/9/10. (Sig.) Jos. Doyle, Dy. Clerk.

65 EXHIBIT MARKED "X-1" (CERTIFIED COPY OF AN ACT OF SALE, PASSED BEFORE RICHARD BRENNAN, NOTARY PUBLIC, ON THE 28TH DAY OF JUNE, 1852, TRANSFERRING TO JAMES CURRIE ALL OF THE PROPERTY RIGHTS AND FRANCHISES OF THE ORLEANS NAVIGATION COMPANY); OFFERED IN EVIDENCE BY THE STATE OF LOUISIANA.

Filed March 7th, 1910.

No. 49. 28 June, 1852.

Sale of Rights, &c., of Orleans Navigation Co. by Jacob S. Halsey, Liq'd. Comm'r, to James Currie.

Book 60, F. 512, 513 & 514.

STATE OF LOUISIANA,

Parish of Orleans and City of New Orleans:

Be it Known that on this Twenty Eighth day of June in the Year of Our Lord one thousand eight hundred and fifty two,

That in conformity to an act of the Legislature of the State of Louisiana in General Assembly Convened, approved the Eighteenth day of March last (1852) entitled "An Act relative to the Orleans Navigation Company, the Bayou St. John and Canal Carondelet"; in obedience to an order rendered on the Twenty first day of April last (1852) by the Honorable A. M. Buchanan, Judge of the Fifth District Court of New Orleans, and in virtue of the powers in him vested as Liquidating Commissioners of the Orleans Navigation Company duly appointed and sworn.

Before me, Richard Brennan, a Notary Public in and for the Parish of Orleans duly commissioned and sworn and in presence of the witnesses hereinafter named and undersigned,

66 Personally Came and Appeared Jacob S. Halsey, Esquire, a resident of this City of New Orleans herein acting in his said capacity of Liquidator of the Orleans Navigation Company, who declared that in obedience to said Order of Court, he exposed at public out cry in the Rotunda of the St. Louis Exchange on St. Louis Street between Chartres and Royal Streets on the Twenty Fourth day of June instant at the hour of twelve o'clock meridian the following described property of the Orleans Navigation Company, the same having been duly advertised in French and English every day during the last Sixty days preceding the day of sale according to law, together with the terms and conditions of the sale, in the Louisiana Courier, a paper published in French and English in the City of New Orleans, and in English alone in the Daily Picayune as will be seen by reference to the annexed proces verbal of sale and copies of the advertisements thereof; and that in con-

formity to said adjudication and sale he has granted, bargained and sold and does by these presents, grant, bargain, sell, alien and transfer unto James Currie, Esquire, a resident of the City of New York here present, accepting and purchasing for himself his heirs and assigns and acknowledging the due transfer thereof all and singular the rights, titles, interests and claims which the said Orleans Navigation Company had in and to the following described properties viz:—

All the rights, titles, claims and interests which belong to the said Orleans Navigation Company by virtue of its charter resulting from an act enacted by the Governor of the Territory of Orleans by and with the advice and consent of the Legislative Council thereof approved on the third day of July 1905, entitled, "An Act for improving the inland Navigation of the Territory of Orleans", and from an act enacted by the Legislative Council and House of Representatives of the Territory of Orleans in General Assembly convened, approved March 18th, 1809, by the Governor of said

67 Territory and entitled "An Act supplementary to an act entitled, an act for improving the Inland Navigation of the Territory of Orleans", and also from an act enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, approved March 3rd, 1814 by the then Governor of said State entitled, "An act to restrict the powers of the Orleans Navigation Company", which rights, titles, claims and interests for the purposes in the said Charter mentioned, specified and determined extend to and upon the Canal known under the appellation of Canal Carondelet beginning from and including the Basin Carondelet in Basin Street and running to the Bayou called the Bayou St. John also to and upon the said Bayou St. John beginning from the point of its intersection with the said Canal Carondelet and continuing down the same to the Lake Pontchartrain, also to and upon the roads running and situate upon each side of the said Bayou from its junction with said Canal Carondelet to said Lake Pontchartrain; and to and upon all and singular the dependencies and accessories of said Basin, Canal or Bayou of whatever kind, nature or denomination the same may be;

Also all the rights, titles, claims and interest belonging to said Orleans Navigation Company by virtue of the third Section of an Act enacted by the Senate and House of Representatives of the United States of America in Congress assembled, approved on the third of March, Eighteen Hundred and Seven entitled "An Act respecting claims to land, in the territory of Orleans and Louisiana", which rights, titles claims and interest for the purposes in said section mentioned, specified and determined extend to and upon so much of the land of the then Commons adjacent to the City of New Orleans as is necessary to continue the said Canal Carondelet from the said Basin to the Mississippi River; which space of Ground by

68 agreement by and between the Corporation, Mayor, Aldeman and inhabitants of the City of New Orleans, and the said Orleans Navigation Company was by a resolution of the said Corporation, dated the twenty fifth of November Eighteen Hundred and Seven and by a resolution of said Orleans Navigation Company dated the 30th November 1807, determined to be Forty feet wide from the said basin in the middle of Basin Street up to the middle, and twenty feet farther, of that space of ground now Known as Canal Street, and to be also forty feet wide from thence to the river Mississippi; having the difference between the width of the said forty feet and the width of the space called Canal Street to be divided into two equal parts, one to be on each side of the said forty feet so reserved for continuing the said Canal Carondelet from the Basin to the Mississippi River, which space on each side of the said forty feet is forever to remain open as a public highway.

Also all the rights, titles, claims and interests which said Orleans Navigation Company may have in and to the effects of the provisions of the Second Section of an Act of Congress of the United States approved on the tenth of February, Eighteen Hundred and Nine entitled "An Act making appropriations to complete the fortifications commenced for the security of the Sea, ports, towns and harbors of the United States, and to defray the expenses of deepening and extending to the Mississippi River the Canal Carondelet.

Also all and singular that lot of ground situate in the County of Orleans, now in the Parish of Orleans, bounded above by lands then belonging to Don Miguel, and fronting on the said Bayou St. John containing One Hundred and eighty feet front and Five hundred and forty feet in the rear, including the Improvements thereon, which lot of ground and improvements were vested in and conveyed to the said Orleans Navigation Company by an act of Congress, approved on the Eighteenth day of April Eighteen hundred
69 and fourteen entitled "An act granting to the President and Directors of the Orleans Navigation Company and their Successors a lot of ground."

And also all the rights, title and interest of the said Orleans Navigation Company in and to the following described lots, which said title of said Company is now in dispute, to-wit: In and to a lot of ground designated by the Number One, measuring, French measure, Forty five feet and six inches front on Franklin Street, One hundred feet four inches in depth and front on Canal Carondelet, One hundred feet on the line which separates it from lot Number Two, and Thirty Seven feet eight inches in depth on the line which separates it from lot Number Eight.

Also in and to a lot of ground designated as Number Two having French measure, Forty three feet in front on Franklin Street One hundred feet in depth and front on Toulouse Street and Forty Three feet in the rear together with all the improvements thereon.

Also in and to a lot of ground designated as Number Eight, hav-

ing French measure, Fifty feet in front on Toulouse Street, seventy six feet nine inches and a half in front on Treme Street and Eighty feet and Eight inches on the line which separates it from lots number One and Two and Fifty feet and two inches in front to the said Canal Carondelet, together with all the improvements thereon.

Also in and to Two lots of ground designated as Numbers Nine and Ten; number nine having, French measure, forty eight feet front on Toulouse Street seventy two feet ten inches and a half on Treme Street and forty eight feet two inches on Canal Carondelet, and lot number Ten having, French measure, forty eight feet front on Toulouse Street, Sixty nine feet one and a half inches in depth

70 on the line which divides it from lot number Nine, forty eight feet two inches on the Canal Carondelet and Sixty five feet four and one half inches on the line which divides it from lot number Eleven together with the improvements thereon.

Also in and to Two lots of ground, designated as numbers Eleven and Twelve, having each, French measure, Forty eight feet front on Toulouse Street and forty eight feet two inches front on Canal Carondelet, said lot No. Eleven having a depth of Sixty one feet, seven and a half inches on the line which divides it from lot number Twelve, and Sixty five feet four and a half inches on the East side and lot number Twelve having a depth of Sixty One feet seven and a half inches on the line which divides it from lot Number Eleven and Fifty seven feet two and a half inches on the West side together with the Improvements thereon.

Also in and to Four lots of ground designated as numbers "Thirteenth, Fourteen, Fifteen and Sixteen" situate in the front on said Canal Carondelet lot number Thirteen having forty eight feet front on Toulouse Street, fifty four feet one and a half inches on Marais Street, fifty seven feet ten and a half inches on the line which divides it from lot Number Twelve and Forty eight feet two inches front on the Canal Carondelet, lot Number Fourteen measuring Fifty feet two and a half inches on Marais Street, Eighty feet on Toulouse Street, Eighty feet three inches front on Canal Carondelet and forty four feet on the line which divides it from lot Number Fifteen; Lot number Fifteen having Eighty feet front on Toulouse Street, Eighty feet three inches front on Canal Carondelet, forty four feet in depth on the line which divides it from lot Number Fourteen and Thirty seven feet nine inches on the line which divides it from lot Number Sixteen; and lot Number Sixteen having Eighty feet front on Toulouse Street, Eighty feet three inches front on

71 Canal Carondelet, thirty one feet six inches front on Villere Street and Thirty seven feet nine inches on the line which divides it from lot Number Fifteen, all French measure, together with the improvements thereon.

Also in and to Three lots of ground designated as lots Numbers "two, three and four," in square number Forty two, having, to-wit: Lot Number Two, fifty nine feet six inches front on Robertson Street, by One hundred and Twenty feet in depth; lot number Three, Sixty feet front on Canal Carondelet in that part corresponding with the

prolongation of Toulouse Street One hundred and twenty feet in depth and front on Robertson Street, and lot number Four Sixty feet front on the Canal Carondelet in that part corresponding with the prolongation of Toulouse Street, by One hundred and Twenty feet in depth, all French measure.

Also in and to Six lots of ground designated by the numbers "Two, Three, four, Five, six and Seven" in square number Thirty three, having to-wit: Lot No. Two, fifty nine feet three inches front on Villere Street by One hundred and twenty feet in depth, Lot No. Three sixty feet front on Canal Carondelet corresponding with that part of the prolongation of Toulouse Street, by One Hundred and Twenty feet in depth and front on Villere Street. Lots Nos. Four and Five each sixty feet front on Canal Carondelet by One hundred and twenty feet in depth. Lot No. Six sixty feet front on Canal Carondelet by One hundred and twenty feet in depth, and lot Number Seven fifty nine feet five inches front on Robertson Street by one hundred and twenty feet in depth, all French measure.

Also three lots of ground designated as Numbers "Five, Six and Seven," of said square number Forty two having French measure, to-wit: Lots Nos. Five and Six each Sixty feet front on Canal Carondelet by One hundred and twenty feet in depth and lot Number Seven Fifty nine feet eight inches front on Claiborne Street by One Hundred and twenty feet in depth.

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One large mud flat, two small ditto, two old boilers, part of an old engine, one pair mud spoons, a lot of old iron, the contents of a Black Smith's shop tools &c. One cart and a Horse and harness, one pile driver hammer, a lot of old lumber from bath house, a lot of new timber, a lot of timber in the Bayou, the contents of the office, viz: One iron safe, one large table, two large armoirs, one press and seal, one small table, one dozen chairs.

To have and to hold the said Basin, Canal, Bayou, Roads and other properties hereinbefore described unto the said purchaser, his heirs and assigns to their proper use and behoof forever.

This sale according to the adjudication at public Auction above referred to is made and accepted for and in consideration of the sum and price hereinafter set forth and on the terms and subject to the conditions declared at said public sale and herein below fully set forth, viz: For the sum and price of Sixty-nine thousand Dollars (\$69,000.) payable one tenth in cash and the remainder in equal annual instalments from one to twenty years, accordingly the said Mr. Currie has now paid unto the said Mr. Halsey liquidating Commissioner as aforesaid in Current money the sum of Six thousand nine hundred Dollars (\$6,900.) and for the balance of the purchase money he had furnished his Twenty several bonds payable respectively at from one to twenty years after the date of the 24th instant each for the sum of Three thousand one hundred and five dollars (\$3,105) with interest from date until full and final payment at the rate of Five per cent per annum, which bonds being first severally paraphrased "Ne Varietur" by me Notary in order to Identify them with this act were delivered unto the said Mr. Halsey liquidating

Commissioner as aforesaid, the receipt whereof is hereby acknowledged.

And in order to secure the punctual payment at their
73 respective maturities of the said several bonds by the said purchaser signed together with the interest thereon, he the said Mr. Currie does hereby specially mortgage, hypothecate and affect to and in favor of the said Mr. Halsey, Liquidating Commissioner as aforesaid, who also retains the vendor's privilege on the same, or unto any person or persons whomsoever the lawful holder or holders of the said bonds, the property herein above described and sold promising not to alienate deteriorate or in any manner whatever encumber the same or any part thereof to the prejudice of this mortgage.

It is made a Condition of the sale, by the Fourth Section of the said act of the Legislature of this State approved 18th March 1852." That of the purchasers shall organize themselves into a corporation under the laws of this State for a term of twenty five years, for the purpose of carrying out and affecting all the improvements detailed and described in the reports and plans known as Harrison's Reports and Plans, including the construction of a New Basin at the Junction of Canal Carondelet and Bayou St. John of the depth and dimensions set forth in said reports and shall actually complete and affect all said improvements within the terms of three years from the date of their Charter, then the said Corporation shall be entitled to receive and exact all such tolls and revenues for the use of said Canal, Bayou, Roads as the Orleans Navigation Company was entitled to receive under its Charter, Provided that at the end of said term of twenty five years, the State of Louisiana shall have the option either of granting to said corporation a renewal of the right of receiving said tolls for a second term of twenty five years, or of purchasing for itself the property and Improvements of the Company at the appraised value thereof, And provided further that if said

Second Term of twenty five years be granted the whole property shall revert to the State of Louisiana, at the end of said
74 Second term without any payment or compensation made to said Company. Also by the Fifth Section of said Act of Legislature last above cited it is also conditional "That any corporation formed under the provisions of the preceding section shall be entitled to demand and secure said tolls from the time of its organization on furnishing bond to the satisfaction of the State Treasurer in the sum of Fifty Thousand Dollars, to secure the Completion of all the Improvements aforesaid within said term of Three years.

And by the Sixth and last section of said act of the Legislature of this State last above cited it is further conditioned "That if the works and Improvements to be made by the purchaser be not begun within Six months and completed within Five years, all the rights, title and interest acquired by the said purchaser under the provisions of this act, together with all the improvements that may be made shall vest in and belong to the State.

By the annexed certificate of the Recorder of Mortgages for this Parish bearing even date herewith it does not appear that any

mortgage exists standing in the name of said Orleans Navigation Company Recorded against the property herein sold.

By the annexed Certificate of the Register of Conveyances for this City also dated this day it appears that there is no Conveyances from the Orleans Navigation Company but the following, to-wit: A Sheriff's deed dated 16th August 1841, recorded in Book 30 Folio 547 conveying all the said property and privileges excepting the personal to Laurent Millaudon, and another Sheriff's deed dated 6th October 1842, Recorded in Book 31, folio 492, conveying all except the property and privileges Firstly described and the remaining privileges to the First Municipality of New Orleans.

75 Thus done and passed in my office at New Orleans, aforesaid in the presence of William H. Bird and George Clark, competent witnesses who have on the day, month and year first above written, signed their names hereunto together with the said appearers and me, Notary.

JACOB S. HALSEY,
Liquidating Commissioner.
JAS. CURRIE.
R. BRENNAN, *Not. Pub.*

WM. H. BIRD.
GEORGE CLARK.

I, Register of Conveyances, Certify that the foregoing act has been this day recorded in my Office in Book No. 60, folios 6, 7, 8, 9, 10, 11 & 12.

New Orleans, July 1st, 1852.

F. B. VINOT, *D'y Rec.* [SEAL.]

STATE OF LOUISIANA,

Parish of Orleans:

I, the undersigned, Peter Stifft, Custodian of Notarial Records in and for the Parish of Orleans and State of La., do hereby certify that the above and foregoing is a true and correct copy of the Original on file and of Record in my Office.

Witness my hand and official seal, this 2nd, day of March, 1910.

(Sg.)

PETER STIFFT, [SEAL.]
Custodian of Notarial Records.

EXHIBIT MARKED "X-2" (CERTIFIED COPY OF THE ACT OF INCORPORATION OF THE NEW ORLEANS CANAL & NAVIGATION COMPANY,) OFFERED IN EVIDENCE BY THE STATE OF LOUISIANA.

Filed March 7th, 1910.

STATE OF LOUISIANA,

Parish of Orleans:

Act under private signature acknowledged before John Broadhead, a Commissioner for the State of Louisiana residing in Pennsylvania on the 19th of October 1852, which is in the following words:

Charter of the New Orleans Canal & Navigation Company.

We, the undersigned agree to form ourselves into a corporation, under the laws of the State of Louisiana as particularly set forth in an act for the organization of Corporations for works of public improvements and utility, approved March 12th, 1852, and an act of said State entitled an act relative to the Orleans Navigation Company, the Bayou St. John and Canal Carondelet approved March 18th 1852, for the purpose of improving the Canal Carondelet and the navigation of the Bayou St. John, and in accordance with the Charter of the Orleans Navigation Company and for that purpose have formed the annexed Charter and signed the same.

Charter of the Company.

I. The said Corporation shall be called The New Orleans Canal & Navigation Company, its domicile is fixed in the City of New Orleans, The President of the Company is the officer designated as the one on whom legal service of all process or citation against the Company may be made and the Company agree to be bound by service of process or citation whether made on the President in person or left to his address at the office of the Company in the hands of any of its officers.

II. The said Corporation is established for the purpose of making improvements upon the Canal Carondelet Bayou St. John and other purposes within the Parish of Orleans in the State of Louisiana in accordance with an act of said State entitled an act relative to the Orleans Navigation Company, The Bayou St. John and the Canal Carondelet approved March 18th, 1852, and in accordance with the Charter of the Orleans Navigation Company.

III. The capital stock of said Company is fixed at Five hundred Thousand Dollars (\$500,000.00) divided into Five Thousand shares of One hundred Dollars (\$100.00) each. A payment
77 of fifteen per cent, on the amount of each share shall be made at the time of subscription. The subsequent payments shall be made in such sum and at such periods as shall be fixed by the directors.

IV. The business of the Corporation shall be conducted by a Board composed of Nine Directors who shall be stockholders. The directors shall elect one of the body as President of the Company at the first meeting after their election. A quorum to transact business shall consist of at least Five Directors.

V. At all elections by the stockholders, and at all their meetings each share shall be entitled to one vote. Votes may be given in person or by proxy.

VI. The first election of directors shall be held on the 18th of October 1852, in the City of Philadelphia. The directors then elected shall hold office until the first Monday in January 1854, on which day and annually thereafter the election of directors shall take place. The elections shall be by ballot. On each ballot shall

be written the name of the person voted for and the number of shares which it represents.

VII. A failure to elect directors shall not dissolve the Corporation, but the Board in office shall continue to exercise of its functions until a new Board shall be elected.

VIII. All notices of elections and meetings of stockholders shall be given by publication thirty days in a newspaper in New Orleans and Philadelphia.

IX. In case of failure on the part of any subscriber to pay the installments on his stock, as may be required the Board of Directors shall have the option, after thirty days' notice to the defaulter of declaring his stock forfeited and selling it for the benefit of the company, or compelling by suit, the payments of such installments and no stockholder shall be permitted to vote on any question whilst in default.

78 X. All meetings of the stockholders called for the purpose of increasing or diminishing the capital stock of the Company, or for any of the purposes enumerated in the Fifth Section of the Act of the Legislature of Louisiana, entitled, An Act for the organization of Corporations for Works of Public Improvements and utility, shall be composed of persons holding in their own rights, or as Agent for others at least two thirds of the stock of the Company, in order to take valid and binding action in the premises, at all other meetings of the stockholders and at all elections a majority of the capital stock of the Company shall be represented. And in this latter case, if such majority be not present nor represented, the meeting shall be adjourned for ten days, and the vote of the majority of the stock present or represented, at such adjourned meeting shall bind the company in the manner as if a majority of all the stock were present and represented.

XI. Any vacancy in the Board of Directors occurring during the year may be filled by a vote of the Board of Directors.

XII. The president and Directors of said Corporation shall have the power to make and use a common seal, and to do everything necessary for the construction, repair and maintenance of the improvements of the navigation of the Canal and Bayou hereinbefore described, as well as for the construction of docks, wharves and other improvements deemed necessary. To make all contracts necessary for the purpose of speedily and properly making improvements. To purchase all machines and other equipments deemed by them necessary or useful to the purposes of the Company. To appoint a Secretary, Treasurer, Superintendent and other Officers and servants necessary or proper for the faithful performance of any duty necessary to the construction and proper maintenance of the said improvements. To fix the rates of tolls thereon. To

79 make rules and regulations and other by-laws being necessary for the proper, safe and regular transactions of the business of the Company. But such rules and regulations shall be subject to repeal or amendments by a majority of the stockholders at their meetings, or by the President and Directors in the intervals. They shall dec-are semi annually the dividends arising from said

improvements, after the payment of all necessary expenses, and they shall keep or cause to be kept, a regular set of books, in which shall be entered all the business transactions of the Company.

XIII. Stock books shall be kept at the office of the Company. Certificates of stock shall be issued to the shareholders, and no transfer of stock shall be binding on the Company until made on its stock books. No transfer of stock shall exempt the party transferring it from the obligation of paying installments previously called for. And no stockholder shall be entitled to vote, at any meeting of the stockholders unless he became a stockholder, on the books of the Company, at least thirty days previous to such meeting.

XIV. The directors may establish offices for the transfer of stock in the City of Philadelphia and New Orleans.

XV. No money shall be borrowed by the said Company unless authorized by a vote of two-thirds of the stock represented at a regularly called meeting of the stockholders, *by* the Board of Directors may contract for the purchase of land, machinery, materials and other necessary supplies or labor on such terms as they may deem proper.

XVI. At the annual meetings of the stockholders, on the First Monday in January, statements of the financial and other affairs of the Company, shall be laid before the meeting by the President and Directors then in office.

80 The president and directors may call other meetings when they may think proper, and it shall be their duty at any time, on the requisition in writing of stockholders representing one-fifth of the stock of the Company to call a meeting of the stockholders, to take into consideration any matters affecting the interest of the Company.

XVII. At the expiration of the Charter or whenever the dissolution of the corporation shall render necessary its liquidation, three commissioners shall be elected by the stockholders, at a meeting convened for that purpose, whose duty it shall be to take possession of the property of the Company and conduct its business to a final liquidation, on such terms and in such manner as shall then be determined, and in accordance with the act of the Legislature of the State of Louisiana, entitled, An Act relative to the Orleans Navigation Company, the Bayou St. John and Canal Carondelet approved the 18th March, 1852.

Philadelphia, October 18th, 1852.

| | | |
|----------|-------------------|-------------------|
| (Signed) | ARCH'D ROBERTSON. | ISAAC D. KNIGHT. |
| | OLIVER HOUGH. | SAMUEL NEWELL. |
| | ALEX. OSBOURN. | I. A. CUMMINS. |
| | STEWART NEWELL. | P. C. WRIGHT. |
| | B. DOUREDOUTRE. | EDWARD H. DURELL. |

STATE OF PENNSYLVANIA,

City and County of Philadelphia:

Be it remembered that on this the 19th day of October in the year of our Lord, 1852, before me John Broadhead, a Commissioner, resident in said State of Pennsylvania, appointed by the Governor

of the State of Louisiana, to take the acknowledgment and proof of deeds, and other instruments of writing, personally appeared, Archibald Robertson, Oliver Hough, Alexander Osbourn, Stewart Newell, B. Douredoure, Isaac D. Knight, Samuel Newell, A. A. Cummings and P. C. Wright, who are severally known to me to be the individual- whose names are subscribed to the foregoing writing and they did severally and each one for himself acknowledge that they executed the foregoing writing for the uses and purposes therein mentioned.

In Testimony Whereof I have hereunto set my hand and affixed my official seal as such Commissioner the day and year last, aforesaid.

(Signed)

JOHN BROADHEAD,
*Commissioner for the State of Louisiana,
Residing in Pennsylvania.*

We the subscribers to the charter of the New Orleans Canal and Navigation Company hereby agree and bind ourselves, to take such number of shares as are placed opposite our names and subscribed by us respectively.

Philadelphia, October 18th, 1852.

| | |
|---------------------|----------------------|
| ARCHIBALD ROBERTSON | Five hundred shares. |
| OLIVER HOUGH | Five hundred shares. |
| ALEX. OSBOURN | Five hundred shares. |
| STEWART NEWELL | Five hundred shares. |
| BERNARD DOUREDURE | Five hundred shares. |
| ISAAC D. KNIGHT | Five hundred shares. |
| SAMUEL NEWELL | Five hundred shares. |
| I. A. CUMMINGS | Five hundred shares. |
| P. C. WRIGHT | Five hundred shares. |
| EDWARD H. DURELL | Five hundred shares. |

Witness present to the signing of Archibald Robertson, Oliver Hough, Alexander Osbourn, Stewart Newell, Bernard Douredoure, Isaac D. Knight, Samuel Newell, I. A. Cummings, P. C. Wright.
(Signed) JOHN BROADHEAD.

Witness to signature of Edward H. Durell at New Orleans, October 26th, 1952.

(Signed) E. D. RAND.

New Orleans, October 27th, 1852.

EDMOND C. WILTZ, *D'y R.*

82 I, the undersigned Recorder of Mortgages in and for the Parish of Orleans, State of Louisiana, do hereby certify the above to be a true and correct copy from the records of my Office, Book 3, folio 2.

N. O. March 2nd, 1910.

[SEAL.]

(Signed)

EMILE LEONARD, *D. R.*

EXHIBIT MARKED "X-3."

*(Certified Copy of an Act of Sale by the New Orleans Canal & Navigation Company to the Carondelet Canal & Navigation Company, Passed on the 3rd July, 1857, before Eusebe Bouny, N. P.)
Offered in Evidence by the State of Louisiana.*

Filed March 7th, 1910.

No. 46.

3d July, 1857.

*Compromise & Transfer of Property by New Orl. Can. & Nav. Comp.
to Carondelet Can. & Nav. Comp.*

STATE OF LOUISIANA,

Parish and City of New Orleans:

Be it known, That on this Third day of July in the year of our Lord one thousand eight hundred and fifty seven and of the Independence of the United States of America the eighty first,

Before me, Eusebe Bouny, a Notary Public in and for the Parish and City of New Orleans, State of Louisiana, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, Personally Came and Appeared, Mr. Louis Gagnet, of this City, and Mr. James Currie, of the City of New York, herein acting as a majority of the Committee of Agents appointed to represent the New Orleans Canal and Navigation Company, by a Resolution adopted at a meeting of the Stockholders of the said Company, held at their office in the City of Philadelphia, State of
83 Pennsylvania, on Friday the 8th day of May, 1857, a duly Certified and authentic copy of which resolution is hereto annexed for reference. The same having been ratified by a meeting of Stockholders held in New Orleans, on the 3rd. day of July, 1857, as appears also from the resolution hereto annexed.

And Mr. Riviere Gardere, of this City, herein acting as President of the Board of Commissioners appointed by an act of the Legislature of Louisiana, entitled "An act to incorporate the Carondelet Canal and Navigation Company of New Orleans" approved March 16th, 1857. The last named appearer herein acting by virtue of certain resolutions passed, June 30th, 1857, by the said Board of Commissioners, a duly certified copy of which resolution is hereto annexed for reference.

And the said appearers declared that by the 10th Section of the Act of the Legislature above recited, the Commissioners of the Carondelet Canal and Navigation Company of New Orleans, were duly authorized "to enter into compromise with the New Orleans Canal and Navigation Company, by which said New Orleans Canal and Navigation Company might agree to transfer, previous to the time

at which their Charter might incur forfeiture, all their rights and privileges."

That in pursuance of said clause, the duly authorized Agents of the New Orleans Canal and Navigation Company have made to the Commissioners of the Carondelet Canal and Navigation Company the offer contained in the letter included in the Resolutions of June 30th 1857 above reported, and that said offer having been accepted as equally appears from the same resolutions, the President of the Board of Commissioners was authorized to carry the same into execution by a public act to be passed before the undersigned Notary,

Therefore, Messrs. James Currie and Louis Gagnet, here present
 84 and acting in their aforesaid capacity of Agents of the New Orleans Canal and Navigation Company in conformity with the foregoing "expose", do hereby transfer, set over and assign unto the Board of Commissioners of the Carondelet Canal and Navigation Company of New Orleans, herein represented by their President, R. Gardere, Esq., and for the special use and benefit of the said Carondelet Canal and Navigation Company,—all the rights, immunities, franchises and privileges whatsoever which, they, as a corporation created under the laws of Louisiana held or claimed to hold over the property known as Carondelet Canal, the Bayou St. John, its tributaries and dependencies of whatever nature generally. Whether those rights, immunities, franchises and privileges result from any public or private law, or from any public or private act of Incorporation, hereby resigning now and forever all their said corporate rights, immunities, franchises and privileges unto the hands of the Carondelet Canal and Navigation Company, in the true intent and spirit of the Act of the Legislature of Louisiana incorporating the same, and as fully as of the same had been duly cancelled and annulled by a regular and final decree of forfeiture.

And the said James Currie and Louis Gagnet, in their aforesaid capacity, and still in furtherance of the Compromise agreed upon between the parties, do hereby assign, set over and transfer unto the said Board of Commissioners, herein represented by their President, R. Gardere, Esq., for the use and benefit of the Carondelet Canal and Navigation Company of New Orleans, all the rights, title and interest of the New Orleans Canal and Navigation Company in and to the following landed property, to-wit:

1st. A certain triangular piece of ground bounded by Toulouse, St. Louis and Clark Streets, and the Bayou St. John which consists of two lots of ground designated by the Nos. One and Two, in square No. One hundred and twenty seven; said triangular piece of ground, forming the whole of said square No. One hundred and
 85 twenty seven and having in American measure the following dimensions, to-wit: Lot No. one has one hundred feet on Clark street by fifty feet in depth and on the line dividing it from lot No. Two and lot No. Two has forty five feet front on said Clark street by Seventy six feet in depth and front on St. Louis street.

2nd. Eleven lots of ground designated by the Numbers from number One to Eleven inclusively, situated in the Second District late First Municipality of the City of New Orleans, composing a portion of ground designated by the No. One hundred and five, which meas-

ures One hundred and twenty three feet two inches and one line front on Genois Street, Two hundred and forty nine feet, Eleven inches and eight lines front on the Bayou St. John, Two hundred and Twenty Four feet Eleven inches and two lines on the rear line, running from Genois to the Bayou St. John; and lots Nos. Four to Ten inclusively forming the whole front of said portion of ground on Toulouse street, said portion of ground lying in and being a part of the Square bounded by Toulouse, St. Peter & Genois Streets and the Bayou St. John.

3rd. Four lots of ground situated in the Second District, late First Municipality of this City, in square No. One hundred and six bounded by Clark, Genois, St. Louis and Toulouse Streets and designated by the Nos. Two, Three, Four and Five, which said lots are all contiguous and have the following dimensions, to-wit:—Lot No. Two measures Thirty four feet eight inches front on Toulouse street by a depth between equal and parallel lines of One hundred and two feet and three inches; lot No. Three measures thirty four feet seven and a half inches front on Toulouse Street by a depth between equal and parallel lines of One hundred and two feet and three inches, and Lots Nos. Four and Five measure each Thirty four feet, seven inches front on Toulouse street by the same depth as the other described lots.

86 4th. A certain lot of ground situated in the Second District, late First Municipality of this City, which said lot is designated by the No. One in Square No. One hundred and six bounded by Genois, Clark, St. Louis and Toulouse Streets; said lot forming the corner of Genois and Toulouse Streets and measuring in American measure, Thirty four feet, eight inches front on Toulouse Street by One hundred and two feet, three inches in depth and front on Genois Street.

5th. Two lots of ground situated in the Second District, late First Municipality of this City, in square No. One hundred and six, bounded by St. Louis, Toulouse, Clark and Genois Streets, said lots being designated by the Nos. Six and Seven, adjoining each other and measuring in American measure, as follows, to-wit: Lot No. Six, measures Thirty four feet seven and a half inches front on said Toulouse street and lot No. Seven measures thirty four feet seven inches front on said Toulouse street both having a depth of One hundred and two feet and three inches between equal and parallel lines.

6th. A lot of ground situated in the Second District, late First Municipality of this City, in the square No. One hundred and six, bounded by St. Louis and Toulouse and Genois and Clark streets, said lot being designated by the No. Eight, forming the corner of Clark and Toulouse streets and measuring in American measure thirty four feet eight inches front on Toulouse street by One hundred and two feet three inches deep and front on Clark street.

7th. Three certain lots of ground lying and being in the Second District, late First Municipality in this City, in the square bounded by Toulouse, St. Louis, Clark and Genois streets, said lots measuring respectively in American measure as follows, and being designated by the Nos. Eleven, Twelve and Thirteen; Lot No. Eleven forming the corner of Clark and St. Louis streets has a front of thirty four feet eight inches on St. Louis street by a depth

of One hundred and two feet three inches and front on Clark street; Lot No. Twelve has the same front on St. Louis street, by a like depth between parallel lines; and lot No. Thirteen has thirty four feet seven and half inches front on said St. Louis street by the same depth between equal and parallel lines.

8th. Four certain lots of ground situated in the Second District, late First Municipality of this City, in square No. One hundred and six bounded by Toulouse, St. Louis, Clark and Genois streets, which said lots are severally designated by Nos. Nine and Ten and Nineteen and Twenty, and have the following dimensions in American measure, to-wit: Lots Nine and Ten measure each thirty three feet front on Clark street by a depth of One hundred and thirty eight feet four inches between equal and parallel lines; and lots Nineteen and Twenty measure each thirty two feet two inches front on Genois street by a depth of One hundred and thirty eight feet and four inches also between equal and parallel lines.

Together with all the improvements, rights, ways and privileges belonging or appertaining to the above described property; the whole being in conformity to a plan drawn by Geo. T. Dunbar, dated 12th December 1848 and to a copy thereof made by A. H. D'Hemecourt and both deposited in the Office of Robert J. Ker, notary public.

9th. A lot of ground situated in this Parish near the mouth of the Bayou St. John on the East Bank thereof, measuring about one hundred and eighty feet front on said Bayou by Five hundred and forty feet in depth being the same contained in the act of donation passed by Congress and approved April 18th, 1814.

10th. A certain strip of ground near the mouth of Bayou St. John, Western Bank, measuring Four hundred and Eighty feet to said Bayou, by such a depth as will give a superficial area of about Forty Nine thousand one hundred and twenty square feet, including however such portions as have already been excavated for the enlargement of the Canal, and subject to the obligations of removing the dirt and levelling it in the lots in rear, in conformity with the act of Compromise passed between B. and J. Genois and the New Orleans Canal and Navigation Company, before A. Boudousquie, Notary Public, on the 27th day of May, 1853.

To have and to hold the said property free from all claims, evictions, mortgages and liens as hereafter expressed.

And they further transfer, set over and assign unto the same parties and for the same purposes, all the moveable effects, machinery, boats, materials, tools and utensils of any nature whatever, whether on water or land belonging to the said New Orleans Canal and Navigation Company, as well as all such buildings and building materials which may be found on or out of the premises of the said Company but rightfully belonging to the same.

The whole under full and complete guarantee against any claims, lien or privilege whatever.

The present transfer and guarantee having been duly accepted by the said Board of Commissioners, now, in consideration of the same and in conformity with the resolutions above reported of June

30th, 1857, the said Board of Commissioners herein represented by R. Gardere the President, stipulating on behalf of the Carondelet Canal and Navigation Company, a corporation duly organized under a law of this State approved March 16th 1857 do hereby bind themselves to place to the credit and hold ready for the benefit of the

89 New Orleans Canal and Navigation Company or its duly authorized Agents, One thousand shares of the capital stock of the Carondelet Canal and Navigation Company of One hundred dollars each, which said One thousand shares, amounting to the sum of One hundred thousand dollars are to be considered as having been paid in full by the said New Orleans Canal and Navigation Company and are to be so placed on the books of the Carondelet Canal and Navigation Company, in full compensation and set off of the transfer of rights, property and moveables above made by the New Orleans Canal and Navigation Company to the Carondelet Canal and Navigation Company.

And now, in as much as by the Certificate of the Recorder of Mortgages of this Parish, hereto annexed, there appears to be certain incumbrances recorded against part of the landed property hereby transferred, and as there may be moreover some lien or privileges, claims on the moveable effects, boats, materials, machinery, tools, &c. &c., also hereby transferred.

Therefore, to guard and save the Carondelet Canal and Navigation Company from any harm, trouble, loss, evictions or damages whatever, resulting from such mortgage lien or privilege, it is agreed between the parties that the One thousand shares of the capital stock of the Carondelet Canal — Navigation Company which are to be placed as full paid stock to the credit of the New Orleans Canal and Navigation Company, shall not be transferrable by the said New Orleans Canal and Navigation Company, until it has been fully proved to the satisfaction of the Carondelet Canal and Navigation Company that all dangers of evictions, loss or damages resulting from any lien, privilege or mortgage has ceased to exist.

It being well understood, however, that portions of said stock may be released from said formality, as soon as the President of the Carondelet Canal and Navigation Company, assisted by the Counsel of said Company, shall deem it prudent to do so.

90 It is therefore well understood that the foregoing transfer of moveable and immoveable property is made by the New Orleans Canal and Navigation Company free from all liens, privileges, mortgages or incumbrances whatever, and that should the Carondelet Canal and Navigation Company be evicted from any portion thereof or be obliged to pay any amount whatever for the preservation of the same, the value of the thing evicted from or the amount paid for the preservation thereof shall be charged to the said New Orleans Canal and Navigation Company and imputed, with interest and costs to the stock held by said Company in the Carondelet Canal and Navigation Company, in pursuance of the present compromise.

It is however well understood that the said New Orleans Canal and Navigation Company are not to be charged, nor are they in any manner to be held responsible for the amount of a certain bonded

debt, still remaining due by them on the original purchase price of the Rights and Privileges of the Old Navigation Company, as bought by them at Sheriff's Sale in 1852 and amounting to Forty Nine thousand Six hundred and Eight Dollars, with interest divided into Coupons falling due within 17 years from these presents, and including one of said bonds now protested and past due since last month,—but, on the contrary that the Carondelet Canal & Navigation Company of New Orleans shall assume and pay said bonded debts as the same falls due, in the discharge and acquittance of the New Orleans Canal and Navigation Company, but shall have no claim whatever against said Canal for the payments to be made.

Thus done and passed, in my Office at New Orleans, aforesaid, in the presence of Lucien Pilie and George W. Nott, witnesses,
 91 both of this City, who hereunto sign their names with parties, and me, the said Notary.

(Original Signed)

LOUIS GAGNET.

JAS. CURRIE.

R. GARDERE.

E. BOUNY, *Not. Pub.*

Approved:

HENRY ST. PAUL.

GEO. W. NOTT.

L. PILIE.

I, Register of Conveyance, Certify that the present act has been this day recorded in my Office in Book No. 74, folios 219, 220, 221, 222 & 223.

New Orleans, July 8th, 1857.

S. M. WESTMORE, *Register.*

STATE OF LOUISIANA,

Parish of Orleans:

I, the undersigned, Peter Stiff, Custodian of Notarial Records in and for the Parish of Orleans and State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office.

Witness my hand and official seal, This 2nd, day of March, 1910.

(Signed)

[SEAL.]

PETER STIFF,

Custodian of Notarial Records.

EXHIBIT MARKED "X-7."

(Copy of Letter Dated March 5th, 1909, Addressed to Messrs. A. J. Davidson, J. H. Elliott and Hans Widner, Liquidators of the Carondelet Canal and Navigation Co., of New Orleans, by the
92 Attorney General); Offered in Evidence by the State.

Filed March 7th, 1910.

MARCH 5, 1909.

MESSRS. A. J. Davidson, J. H. Elliott and Hans Widner, Liquidators of the Carondelet Canal & Navigation Co., of New Orleans, New Orleans, La.

DEAR SIRS: In view of the fact that the time during which the Carondelet Canal & Navigation Company of New Orleans has had the right to enjoy the possession and control of the Carondelet Canal and Bayou St. John, together with the Old Basin, with all of the revenue derived therefrom, has expired, and that it becomes the duty of the State of Louisiana, through the Board of Control for the Bayou St. John and Carondelet Canal and Old Basin, to take possession of the said Carondelet Canal, Bayou St. John and Old Basin, together with all the property and improvements connected therewith, or in any wise thereto belonging or appertaining, in order that the same may be controlled, managed, and administered, by said Board, for the use and benefit of the State, and, in view of the further fact, that, at a meeting of said Board of Control, held on the first day of October, 1908, a resolution was adopted requesting me, as Attorney General of the State to take such action as, in my judgment, would be proper to "have the State put into possession of the Bayou St. John, Carondelet Canal and Old Basin and all its properties and rights." I now hereby make formal demand upon you to deliver into the possession and control; of the said Board of Control of the Bayou St. John and Carondelet Canal and Old Basin, the said
93 Bayou St. John, and Carondelet Canal and Old Basin, together with all the properties and improvements connected therewith or in any wise thereto belonging or appertaining.

In default of your complying with this formal demand, within a reasonable delay, I now notify you that I will institute suit for the purpose of recovering, for the State, to be controlled, managed and operated by the Board of Control aforesaid, the said Carondelet Canal and Bayou St. John and Old Basin, together with all the properties and improvements connected therewith or thereto belonging or appertaining.

Be pleased to let me hear from you at your early convenience and oblige,

Yours truly,
"(Signed)

WALTER GUION,"
Attorney General.

(EXHIBIT MARKED "X-8.")

(Reply to Foregoing Letter); Offered in Evidence by State.

Filed March 7th, 1910.

NEW ORLEANS, March 13th, 1909.

Hon. Walter Guion, Attorney General, State of Louisiana, New Orleans, La.

DEAR SIR: Your letter of March 5th, 1909, to Messrs. A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators of the Carondelet Canal and Navigation Company of New Orleans, in which you demand in behalf of the Board of Control for the Bayou St. John and Carondelet Canal and Old Basin the delivery and possession of the Carondelet Canal, Old Basin, Bayou St. John, together with all the properties and improvements connected therewith or in anywise thereto belonging or appertaining, has been handed to us, 94 as attorneys for Messrs. Davidson, Elliott and Widmer, Liquidators, for answer.

Whenever the State complies with her contract obligations with the Carondelet Canal & Navigation Company as declared in Section 4 of Act No. 74 of the Acts of 1858, the Liquidators will be pleased to comply with the demand to deliver the canal property to the representatives of the State.

The Canal Company had already complied with the provisions of that section so far as is incumbent upon it by appointing Mr. Philip Werlein the Commissioner to represent it in the award which the statute provides shall be made, fixing the compensation to be paid by the State on taking over the canal property.

We, as counsel for the company, on March 10th, 1908, notified the Governor of the State of this appointment requesting the Governor to appoint a Commissioner representing the State and requesting the Governor to join the Liquidators in an application to the Civil District Court for the Parish of Orleans to name the third Commissioner. The Governor has ignored these communications beyond acknowledging receipt thereof.

We have advised our clients that the action of the State in appointing a Board of Control to take possession of this canal and to manage it is an election by the State to take the reversion of the property and this the State cannot do under the terms of the contract between the State and the Carondelet Canal & Navigation Company, unless and until it shall have paid the compensation fixed as provided in the contract. As no compensation has been fixed or tendered or provided for by the Legislature we must, on behalf of the Liquidators, decline your demand for delivery.

Your obid-ent servants,

(Signed)

EDGAR H. FARRAR,
BENJ. T. WALSO,
WM. C. DUFOUR.

*Attorneys for A. J. Davidson, J. H. Elliott, and Hans Widmer,
Liquidators Carondelet Canal & Navigation Company.*

EXHIBIT MARKED "D-1."

(Photographic Copy of Ancient Map with Certificate of the Clerk of Supreme Court Attached.) Offered in Evidence by Counsel for Defendants.

Filed March 9th, 1910.

(Here follows photograph.)

[Endorsed on map:] D-1. Law Offices Benjamin T. Waldo, 317-318 Hennen Building, New Orleans. No. 89798. Civil District Court, Div. C. State of Louisiana vs. Carondelet Canal & Navigation Co. Photographic copy of ancient map, the original of which forms part of the archives of the Supreme Court of the State of Louisiana, with certificate of the Clerk of the Supreme Court attached. No. 89798. Civil District Court, Parish of Orleans. Filed 3/9/10. (Signed) Jos. Doyle, D'y Clerk. Farrar, Jonas, Goldsborough & Goldberg, Saunders, Dufour & Dufour and Benjamin T. Waldo, Attorneys for Defendant.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the attached plan or map is a photographic copy of a plan or map now in the archives of this Court and belonging in and to a record the title of which is lost because the same can not be deciphered upon the aforesaid map or plan but which partially appears upon said map or plan so as to show that the same was filed in evidence in this Court at an early period of the Court's history.

I do further certify that I assumed my duties as Clerk of this Court upon June 30, 1909, and that, immediately, thereafter I made and caused to be made a thorough search of all of the rooms and chambers occupied by the Court, for the purpose of discovering records and transcripts, and parts of records and transcripts in order that all records, transcripts and documents, within the said rooms and chambers, might be properly assorted, arranged and docketed; while so engaged, in the July of 1909, in the work stated, I came upon the ancient map, of which a photographic copy is attached to this certificate.

In testimony whereof I have hereunto signed and have affixed the seal of this court on this 27th day of January, 1910.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court.

[Stamped:] Civil District Court. Mar. 7, 1910. 30. Paid.
Connell, Clerk.

MAPS

TOO

LARGE

FOR

FILMING



EXHIBIT MARKED "D-3."

(Certified Copy of Act of Transfer of Lands along Carondelet Canal and Bayou St. John by F. L. Lebreton Dorgenois, Daniel Clark, Domingo Fleitas, Dame Louise de la Ronde, Widow of Castillon, and the Free Woman of Color, Marie Michel, to the Orleans Navigation Company, before Stephen de Quioñes, Notary Public, July 8, 1811); Offered in evidence by Counsel for Defendants.

Filed March 9th, 1910.

Concession de Terre.

Par devant nous Notaire public resident à la Nouvelle Orleans, et les temoins soussignés, sont comparu. Messieurs F. S. Le Breton Dorgenois; Chew et Relf comme fondé de pouvoir du Sieur Daniel Clark; Domingo Fleitas; Dame Louise de la Ronde, veuve Castillon; et la negresse libre nommée Marie Michel, représentée par le dit Sieur Le Breton Dorgenois, tous propriétaires des terres du Bayou St. Jean situées sur le bord, et au de là du Canal Carondelet, représent en cette Ville, et m'ont déclaré par ces présentes avoir donné et concédé, comme ils donnent et concèdent a perpétuité à la Compagnie de Navigation de la Nouvelle Orleans, et en son nom à Monsieur James Pitot President d'y celle-ci present et acceptant pour la dite compagnie, ses successeurs et ayant causé, la liberté pleine et entiere d'élargir le Canal Carondelet jusqu'à vingt cinq pieds, et de prendre en outre sur leurs propriété de chaque côté, un chemin de soixante pieds de large; moiennant que la dite compagnie de Navigation, pour indemnité du don qu'ils font à la dite Compagnie, elle leurs acorde,

97 ainsi qu'a leurs hoire, et ayant causé, et pour toujours, la permission de vider leurs eaux dans le dit Canal Carondelet par les fossés qu'ils pourront y conduire; et d'y naviguer pour porter leurs den res des lors dites habitations en ville; sans que qui que ce soit par ordre de la direction puisse leurs faire payer aucune retribution à ce sujet dans aucun terme.

Ce que dessus a été ainsi voulu, consenti, stipulé, et accepté mutuellement par les dites parties contractantes, qui en ont promis l'entiere exécution, aux paines de tous dépense, dommages et interets: Bien entendu, que le susdit terrain cédé, tant pour l'élargissement du Canal que pour la route à pratiquer à droite, et à gauche de ce même Canal, ne pourra être employé à d'autres fins, qu'a celles stipulées dans le present acte: Il est de plus entendu, que tout autre acte antérieur au present, et qui aurait pour but le même objet, ou l'établissement d'un Canal d'égout quelconque, sera considéré comme non advenu, fut-il meme signé par les concessionnaires; promettant & obligeant & et renonçant & a fair et passé en mon étude à la Nouvelle Orleans le huit Juillet mil huit cents onze, et la trente sixieme de l'indépendance americaine; et apres lecture faite; les dites parties contractantes se sont ratifiées dans le contenu de cet acte, et ont signé, ainsi que les Sieurs D. C. Williams, et D. Wright temoins requis Habitants residents presents, et moi le dit Notaire public

dont acte signé: Laronde veuve Castillon—Js. Pitot, Pres't. de la Comp'e de Navigation- par Procuration de Dan Clark: Chew & Relf- F. S. Le Breton Dorgenois, tant pour moi, que représentant la negresse libre Marie Michel- Dom'o Fleitas.

Stephen de Quinones Not'y public, cetifie que la coppie précédente est conforme à son original demeure au Grêffe & ma charge
 98 auquel je me reffere; et à la réquisition de Monsieur le President je delivre la presente à la Nouvelle Orleans, le cinq d'Aout mil huit cent onze et la trente sixieme de l'independance americaine, que j'ai signé, et apposé le sceau de mon office.

[SCEAU.]

STEPHIEN DE QUINONES,

Not'y Pub.

Endorsement: 1811. July 8th. An act between the Company & the owners of the lands on Canal Carondelet, granting to the former 25 feet for their Canal and 60 feet on each side thereof for a road. Two Copies.

Endorsement: No. 89,798, Civil District Court, Div. C. State of Louisiana vs. Carondelet Canal & Navigation Co. Certified copy of act of transfer of lands along Carondelet Canal and Bayou
 99 St. John by F. L. Le Breton, Dorgenois, Daniel Clark, Domingo Fleitas, Dame Louise de la Ronde, widow of Castillon and the free woman of Color, Marie Michel, to the Orleans Navigation Company before Stephen de Quinones, Notary Public, July 8, 1811. Exhibit D. 3. Farrar Jonas, Goldsborough & Goldberg, Saunders Dufour & Dufour, and Benjamin T. Waldo, Attorneys for Defendant.

No. 89,798. Civil District Court, Parish of Orleans. Filed 3/9/10. Jas. Doyle Dy. Clerk. Civil District Court, 30C. Mar. 7 1910. Paid. Thomas Connell, Clerk.

100

EXHIBIT D "4."

Certified Copy of Act of Transfer of Lands Along Carondelet Canal and Bayou St. John by F. L. Le Breton Dorgenois, Daniel Clark, Domingo Fleitas, Dame Louise de la Ronde, Widow of Castillon and the Free Woman of Color Marie Michel to the Orleans Navigation Company of New Orleans, Offered in Evidence by Counsel for Defendant.

Filed March 9, 1910.

Translation of Act of Sale and Concession Before Quinones, Notary Public, of July 8th, 1811, by F. J. Le Breton Dorgenois, Daniel Clark, Domingo Fleitas, Dame Louise de la Ronde, Widow of M. Castillon and the Free Woman of Color Marie Michel to the Orleans Navigation Company of New Orleans.

Before us, Notary Public, residing in New Orleans, and the witnesses undersigned, appeared Mr. F. J. Le Breton Dorgenois, Chew

& Relf, under a power of attorney from Mr. Daniel Clark; Domingo Fleitas; Dame Louise de la Ronde, widow of Castillon and the free negress Marie Michel, represented by the said Mr. Le Breton Dorgenois, all owners of lands on the Bayou St. John situated on the banks and across the canal Carondelet, living in this City, and declared to me by these presents that they have given and granted in perpetuity, to the Company of Navigation of New Orleans, and in its name to Mr. James Pitot, its president, here present and accepting for the same company, its successors and assigns, the full and entire power to enlarge the canal Carondelet up to twenty five feet, and to take besides on their property, on each side, a road sixty feet in width; inasmuch as the said Navigation Company, for indemnity of said gift which they make to the said company, accords to them, as well as to their heirs and assigns and forever, to drain their waters into said canal Carondelet by the ditches which they shall be able to conduct to it; and there navigate to reach
 101 their habitations in the City; so that no one whosoever by orders of the board of Directors can exact from them any payment in this regard at any time.

The above has thus been agreed upon, consented to, stipulated and accepted mutually by said contracting parties, who have promised the complete execution thereof under the penalty of all expenses, damages and interest; it being well understood that the above said land transferred both for enlargement of the canal and road to be established on the right and on the left of said canal shall not be used for other purposes than those stipulated in the present act; it is further understood that every other act anterior to the present and which shall have for its end the same purpose or the establishment of a canal of overflow whatsoever shall be considered as not done, even were it signed by the grantees; promising etc., and renouncing, etc., thus done and passed in my office in New Orleans, July 11 and the thirty sixth of the American Independence and after being read the said contracting parties persisted in the contents of this act and have signed this act together with Messrs. D. C. Williams and D. D. Wright, legal witnesses, inhabitants dwelling and here present, and me, the said Notary Public.

(Signed)

LARONDE,

Widow Castillon.

J. PITOT,

Pres. de la Compr. de Navigation.

Per Pro. DAN'L CLARK, CHEW & RELF.

F. J. LEBRETON DORGENOIS,

*For Myself and Representing the
Free Negress Marie Michel.*

DOM. FLEITAS.

STEPHEN DE QUINONES, *Not'y Public.*

Certify that the preceding copy is conformable to its original deposited in the office under my charge to which I refer; and at the request of the president I deliver the present at New

102 Orleans, August 5, 1811 and the thirty sixth of the American Independence. Which I have signed and placed the seal of my office.

(Signed)

STEPHEN QUINONES,
Not'y Pub.

EXHIBIT D "5."

Certified Copy of Act of Transfer of Lands Along Carondelet Canal by Jean Marie Griffon, Marie Thomas Susanne Griffon and Marie Francois Odile Griffon, Sole Heirs of Charles Griffon, to Orleans Navigation Company, Before J. R. Stringer, N. P., on January 16th, 1828, Offered in Evidence by Counsel for Defendant.

Filed March 3, 1910.

STATE OF LOUISIANA.

City of New Orleans:

Be it known that on this sixteenth day of January in the year one thousand eight hundred and twenty eight before me, Greenbury Ridgley Stringer, Notary Public, in and for the City of New Orleans, duly commissioned, personally came and appeared, Jean Marie Griffon, Marie Thomas Susanne Griffon and Marie Francoise Odile Griffon, all of this City who declared that they were the only proprietors of the whole of the tract or piece of land hereinafter intended to be hereby sold and conveyed, and that in consideration of the sum of One thousand dollars to them in hands well and truly paid, in the presence of me Notary and the two subscribing witnesses the receipt whereof is hereby acknowledged. They did by these presents, grant, bargain and convey, sell cede and forever relinquish unto the Orleans Navigation Company their successors and assigns (John Loupre Esquire acting herein under and by virtue of a resolution of the Board of Directors of which the annexed is a copy, which copy is dated the 28th, March, 1827, And as President Pro Tem of the Board of Directors of the said company being also present and accepting the same in his said quality) All their right,
103 title and claim which they or any or either of them have, has or might have or pretend to a certain tract or piece of land, situated and lying on both sides of the Canal of Carondelet, and bounded on the south or the side next to the City and basin by the lands granted to General Lafayette and on the north of the side next the Bayou St. John by the lands of M. Pontalba, the said tract or piece of land extending sixty feet from the bank or border of the said Canal being the width of the roads on each side thereof making together with the land over which the said Canal runs and which is thirty feet wide, a total breadth of one hundred and fifty feet and extending along the said Canal on both sides thereof and parallel or nearly parallel thereto, three hundred and ninety five feet, be the same more or less, the whole conformable to the plan annexed to this act.

Together with the privileges and appurtenances to the same belonging or in anywise appertaining.

Which said tract or piece of land is part of certain property of the said vendor- which they acquired through Marie Jeanne Voisin, deceased, who devised the same to her husband Charles Antoine Griffon, the father of the present vendors who together with their brother Hugues Danville Griffon and their sister Marie Henriette Griffon wife of Thomas Barrett acquired the same by succession from their late father the said Charles Antoine. And the said Jeanne Marie Griffon afterwards acquired the share and interest of said Hugues Danville Griffon, by act passed before Hugh K. Gordon of the 5th, of October, 1826, and also acquired the share and interest of said Marie Henriette Griffon, wife of Thomas Barrett by act passed before said Hugh K. Gordon on the 6th, Oct. 1826. And the said Jean Marie Griffon did by an act passed before Louis T. Caire, Notary on the 10th, Nov. 1826 convey unto his sisters

104 said Marie Thomas Susanne Griffon and Marie Francoise Odile Griffon such share and interest which they now have in said tract or piece of land so purchased by the said Jean Marie Griffon from his brother and sister said Hugues D. Griffon and Marie H. Barrett by said act passed before said Hugh K. Gordon, the said vendors being now at the date hereof, joint owners of said property in equal shares and proportions.

To have and to hold the said tract or piece of land and premises hereinbefore described unto the said Orleans Navigation Company their successors and assigns forever.

And the said vendors for themselves, severally and respectively and for their several and respective heirs shall and will warrant and forever defend the said hereby conveyed tract or piece of land, and premises unto the said Orleans Navigation Company, their successors and assigns, against all and every person and persons whomsoever claim and claims whatsoever by these presents. And it is hereby declared and agreed by and between all the said parties hereto that the said tract or piece of land is hereby conveyed and sold by the said vendors and purchased by the said Company for the express purpose following, viz:—That so much of the same tract or piece of land herein and hereby conveyed as lies on each side of the said canal shall be and is hereby covenanted to be used forever hereafter as a public highway or road.

And thereupon appeared and intervened in these presents, Marie Julienne Josephine Chazal Delavittetelle, wife of the said Jean Marie Griffon who declares that she is willing to release the said above described tract or piece of land from the tacit or other mortgage liens, or claims whatsoever which by the laws of Louisiana she may have thereon and to save harmless and guarantee the said Orleans Navigation Company, their successors and assigns against all claims whatsoever arising out of her liens and claims on the property of her said husband—And having taken the said

105 wife apart and out of the hearing of her said husband, I the said Notary did inform her that by the laws of Louisiana and by her marriage contract with her husband if any such existed

she possessed a tacit mortgage on all the property of her said husband and on that of the community—

First. For the restitution of her dower and the reinvestment of the dotal property which she brought in marriage.

Second. For all property acquired by her during marriage by inheritance or donation.

Third. For indemnity for debts contracted or which she might hereafter contract with her said husband as well as for the employment of such of her funds as may be alienated.

Fourth. For her paraphernal property of which her husband has had or may have the administration or employment. And,

Fifth. For nuptial presents made to her by her husband or by others.

That in making renunciation of her said rights she would deprive herself irrevocably of all privileges of reclamation against the sale of the property so as aforesaid made whether under mortgage privilege or otherwise. And the said wife having considered the said information so to her communicated by me the Notary she declared that she is perfectly acquainted with the nature of her liens and claims on the property of her said husband and that nevertheless she persists in her intention already announced not only to approve and ratify this act but likewise to dispossess herself of all her said liens and claims on the property herein and hereby described and conveyed. And her said husband being now present aiding and authorizing his said wife in the execution of these presents she declares that she does hereby formally renounce henceforth and forever, all and singular her said rights, liens and claims in and to the said

tract or piece of land and hereby assigns, transfers and makes
 106 over the same unto the said Orleans Navigation Company
 their successors and assigns to be had and held by them to
 their proper use and behoof forever in law and interest hereby
 solemnly promising and binding herself and her heirs at all times
 to sustain and acknowledge the validity of this act.

From the annexed certificate of the conservator of Mortgages for this city dated this day it appears that the said tract or piece of land hereby conveyed is subject to no other mortgages than a general mortgage in favor of said wife of said Jean Marie Griffon and a mortgage passed before Hugh Lavergne, Notary on the 17th, of Nov. 1826 in favor of Peyroux Rivarde & Co. for securing the sum of three thousand dollars. And thereupon intervened and personally appeared Silvain Peyroux of this city one of the partners and herein representing the said firm of Peyroux Rivarde & Co. and declared that his said firm being well and sufficiently satisfied with the remaining lands of said Jean Marie Griffon in mortgage to them. They the said Peyroux Rivarde & Co., did hereby grant a full release, discharge and acquittance of the said mortgage of the said 17th day of Nov. 1826 passed before Hugh Lavergne, Notary on so much of the said tract or piece of land thereby mortgaged as in and by the present act of sale is conveyed to the said Orleans Navigation Company hereby consenting and requiring that the same may be cancelled and annulled on the records of the conservator of

mortgages for this City leaving the said mortgage however in full force on the remaining parts of the lands therein mentioned as are not intended to be conveyed by these presents. Thus done and passed in the presence of William Rondeau and Charles A. F. Rondeau witnesses who hereunto sign their names as such with the said parties and me Notary.

(Sg.)

JNO. GRIFFON.

ODILE GRIFFON.

SUZETTE GRIFFON.

CHAZAL GRIFFON.

JN. LONGPRE,

Pres't Pro Tem. Orleans Navig'n Co.

PEYROUX, RIVARDE & CO.,

By SILV PEYROUX.

W. RONDEAU.

CHAS. A. F. RONDEAU.

G. R. STRINGER, *Not. Pub.*

(Sg.)

107 I hereby certify the foregoing to be a true copy of the original act as extent in my current register. In faith whereof I grant these presents under my signature and seal of office this 21st Jany. 1828.

(Sg.)

G. R. STRINGER,

[SEAL]

Not. Pub.

I certify that the within deed has this day been recorded in my office in book No. 2, page 340 and following witness my signature and seal of office New Orleans this twenty second of January eighteen hundred and twenty eight.

(Sg.)

ANTOINE DUCROS,

Register of Conveyances.

EXHIBIT D "7."

Certified Copy of Act of Transfer and Sale Before Richard Brennan, N. P. of October 26th, 1852, by Archibald Robertson, Currie and Others of the Carondelet Canal Property &c. to the New Orleans Canal and Navigation Company, Offered in Evidence by Counsel for Defendant.

Filed March 9, 1910.

No. 123.

26TH OCTOBER, 1852.

Transfer of Rights &c. to Canal Carondelet, Etc. Archibald Robertson, et als. to New Orleans Canal and Navigation Co.

STATE OF LOUISIANA,

Parish of Orleans & City of New Orleans:

Be it known that on this 26th day of the month of October in the year of our Lord one thousand eight hundred and fifty two, before me,

Richard Brennan, a Notary Public in and for the Parish of Orleans and State of Louisiana duly commissioned and sworn and in the presence of the witnesses hereinafter named and undersigned, personally appeared:

108 J. Blodgett Esquire of this City Counsellor at Law, herein acting for and in behalf of Messieurs Archibald Robertson, Oliver Hough, Alexander Osbourn, Stewart Newall, Bernard Douredoure, James A. Cummings, Isaac D. Knight, and Samuel Newell all of the City of Philadelphia in the State of Pennsylvania, by virtue of a power of attorney under their private signature and seals dated the Eighth day of October instant at Philadelphia and hereto annexed for reference; and also herein acting for and in behalf of Messieurs Judah P. Currie, Charles P. Currie and William Currie, all of the City of New York, by virtue of a power of attorney under their seal and signatures bearing date at New York the twentieth day of this present month of October and proved before Moses M. Maclay, a Commissioner of this State for the State of New York to take acknowledgments etc., of the First Part, and Edward Henry Durell Esquire also of this City, Counsellor at Law, herein acting for and in behalf of and representing "The New Orleans Canal and Navigation Company," a body incorporated or associated under the laws of this State and especially governed by the Fourth and Fifth Sections of an Act of the Legislature of this State of Louisiana approved the eighteenth day of March last (1852) entitled "An Act Relative to the Orleans Navigation Company, the Bayou St. John and Canal Carondelet" as will more fully appear by virtue of a power of attorney by the said Association in his favor granted annexed to an act of deposit of the same by him made in this office, of this date, to which reference is hereby made, ——— of the Second Part.

Now therefore the said J. Blodgett Britton Esquire in this aforesaid capacity declared unto me Notary that, whereas the said Archibald Robertson, Oliver Hough, Alexander Osbourn, Stewart Newall, Bernard Douredoure, James A. Cummings, Isaac D. Knight and Samuel Newell of Philadelphia the true and lawful owners of and the said Judah P. Currie, Charles P. Currie and William Currie of New York claiming an interest in, all and singular the rights, title and claims and interest which belonged to the late Orleans Navigation Company in and to the properties, goods, chattels, rights, privileges, immunities, benefits and powers of the same, which, in obedience to an order of the Honorable the Fifth District Court of New Orleans, rendered on the twenty first day of April last (1852) Jacob S. Halsey Liquidating Commissioner of said Orleans Navigation Company sold at auction on the twenty fourth day of June last (1852) at the Rotunda of the St. Louis Exchange in this City, and of which James Currie of the City of New York as their Agent became the purchaser for the amount and on the conditions, stipulations and assumptions hereinafter set forth and expressed, he, the said Mr. Britton now does, by these presents, grant, bargain, convey, assign, set over and deliver unto the said New Orleans Canal and Navigation Company by their said attorney E. H. Durell, Esq., here present, accepting and receiving the same

and acknowledging the due possession and delivery thereof, all and singular, all the rights, titles, claims and interest which were conveyed to the said Agent James Currie by said Jacob S. Halsey, Liquidating Commissioner as aforesaid, as per act of the twenty eighth day of June last past (1852) before the undersigned Notary, and which as fully set forth in said act of sale are in the words and figures following to-wit: All the rights, titles and claims and interest which belong to the said Orleans Navigation Company by virtue of its charter resulting from an act enacted by the Governor of the Territory of Orleans by and with the consent of the Legislative Counsel thereof approved on the third day of July 1805, entitled "An act for improving the inland Navigation of the Territory of Orleans," and from an act enacted by the Legislative Council and House of Representatives of the Territory of Orleans, in General

Assembly Convened approved March 18th, 1809, by the Governor of said Territory and entitled "An act supplementary to an act entitled an act for improving the Inland Navigation of the Territory of Orleans," and also from an act enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, approved March 13th, 1814, by the then Governor of said State, entitled "An act to restrict the powers of the Orleans Navigation Company, which rights, titles, claims, and interests for the purposes in said charter mentioned, specified and determined extend to and upon the Canal known under the appellation of Canal Carondelet beginning from and including the Basin Carondelet in Basin Street and running to the Bayou called the Bayou St. John also to and upon the said Bayou St. John beginning from the point of its intersection with the said Canal Carondelet and continuing down the same to the Lake Pontchartrain also to and upon the roads running and situate upon each side of the said Bayou from its junction with said Canal Carondelet to said Lake Pontchartrain; and to and upon all and singular the dependencies and accessories of said Basin Canal or Bayou of whatever kind, nature or denomination the same may be.

Also all the rights, titles, claims and interests belonging to said Orleans Navigation Company, by virtue of the third section of an act enacted by the Senate and House of Representatives of the United States of America, in Congress Assembled, approved on the Third day of March Eighteen hundred and seven, entitled, "An Act respecting claims to land, in the Territory of Orleans and Louisiana," which rights, titles, claims and interests for the purposes in said connection mentioned, specified and determined extend to and upon so much of the land of the then commons adjacent to the City of New Orleans as is necessary to continue the said Canal Carondelet from the said Basin to the Mississippi River, which space of ground, by agreement by and between the corporation,

111 Mayor, Alderman and Inhabitants of the City of New Orleans, and the said Orleans Navigation Company, was by a resolution of the said corporation, dated the 25th of November Eighteen hundred and seven, and by a resolution of said Orleans Navigation Company dated the 30th, November 1807, determined

to be forty feet wide from the said Basin in the middle of Basin Street up to the middle and twenty feet farther of said space of ground now known as Canal Street, and to be also forty feet wide from thence to the Mississippi River; leaving the difference between the width of the said forty feet and the width of the space called Canal Street to be divided into two equal parts, one to be on each side of the said forty feet so reserved for continuing the said Canal Carondelet from the Basin to the Mississippi River, which space on each side of the forty feet is forever to remain open as a public highway. "Also all the rights, titles, claims and interest which said Orleans Navigation Company may have in and to the effect of the provisions of the second Section of an Act of Congress of the United States approved on the tenth of February Eighteen hundred and nine, entitled "An act making appropriations to complete the fortifications commenced for the Security of the Sea Ports, towns and Harbors of the United States and to defray the expenses of deepening and extending to the Mississippi River the Canal Carondelet."

Also all and singular that lot of ground situate in the County of Orleans, now in the Parish of Orleans, bounded above by lands then belonging to Don. Miguel, and fronting on the said Bayou St. John containing one hundred and eighty feet front and five hundred and forty feet in the rear, including the improvements thereon which lot of ground and improvements were vested in and conveyed to the said Orleans Navigation Company by an act of Congress, approved on the eighteenth day of April eighteen hundred and fourteen, entitled "An Act granting to the President and
112 Directors of the Orleans Navigation Company and their successors a lot of ground," And also, all the right, title and interest of the said Orleans Navigation Company in and to the following described lots, which said title of said company is now in dispute, to-wit: In and to a lot of ground designated by the No. One, measuring French measure, Forty Five feet and six inches in front on Franklin Street, one hundred feet, four inches in depth and front on Canal Carondelet, one hundred feet on the line which separates it from lot number two, and thirty seven feet, eight inches in depth on the line which separates it from lot number eight.

Also, in and to a lot of ground designated as Number 2, having French Measure, forty three feet in front on Franklin Street, one hundred feet in depth and front on Toulouse Street, and forty three feet in the rear, together with all the improvements thereon.

Also, in and to a lot of ground designated as Number Eight having French Measure, fifty feet in front on Toulouse Street, Seventy six feet, nine inches and a half in front on Tremé Street, and eighty feet and eight inches on the line which separates it from lots numbers one and two, and fifty feet and two inches in front to the said Canal Carondelet, together with all the improvements thereon.

Also, in and to two lots of ground designated as Numbers 9 and 10; number 9, having French Measure, forty eight feet front on Toulouse street, seventy two feet, ten inches and a half on Tremé

Street, and forty eight feet, two inches on Canal Carondelet; and lot No. Ten, having, French Measure, Forty eight feet front on Toulouse Street, sixty nine feet one and a half inches in depth on the line which divides it from lot No. Nine, forty eight feet two inches on the Canal Carondelet, and sixty feet, four and one half inches on the line which divides it from lot No. eleven together with the improvements thereon.

"Also, in and to two lots of ground, designated as numbers 113 eleven and twelve having each, French Measure, forty eight feet front on Toulouse Street, and forty eight feet, two inches front on Canal Carondelet; said lot No. Eleven having a depth of sixty even and a half inches on the line which divides it from lot No. Twelve, and sixty five feet four inches and a half inch the East Side, and Lot Number Twelve having a depth of sixty one feet, seven and a half inches on the line which divides it from lot No. Eleven and fifty seven feet ten and a half inches on the West Side, together with the improvements thereon.

Also, in and to four lots of ground, designated as numbers thirteen, fourteen, fifteen and sixteen, situate in the front of said Canal Carondelet, lot No. 13 having forty eight feet front on Toulouse street, fifty four feet one and a half inches on Marais Street, fifty seven feet, ten and a half inches on the line which divides it from lot No. Twelve, and forty eight feet, two inches front on the Canal Carondelet; lot No. fourteen measuring fifty two and a half inches on Marais Street, eighty feet on Toulouse Street, Eighty feet, three inches front on Canal Carondelet, and forty four feet on the line which divides it from lot No. fifteen, lot No. fifteen having eighty feet front on Toulouse street, eighty feet, three inches front on Canal Carondelet, forty four feet in depth on the line which divides it from lot No. fourteen and thirty seven feet nine inches on the line which divides it from lot number sixteen, and lot number sixteen having eighty feet front on Toulouse street, eighty feet three inches front on Canal Carondelet, Thirty one feet, six inches front on Villere Street, and thirty feet, nine inches on the line which divides it from lot number fifteen, all French Measure, together with the improvements thereon.

"Also, in and to three lots of ground designated as lots 114 Nos. two, three and four in square No. 42, having, to-wit: Lot No. 2 fifty nine feet, six inches front on Robertson Street, by one hundred and twenty feet in depth; Lot No. 3 sixty feet front on Carondelet Canal in that part corresponding with the prolongation of Toulouse Street by one hundred and twenty feet in depth and front on Robertson Street, and lot No. 4 sixty feet front on Canal Carondelet in that part corresponding with the prolongation of Toulouse Street, by one hundred and twenty feet in depth, all French Measure.

"Also, three lots of ground designated as lots Nos. five, six and seven of said square No. 42, having French Measure, to-wit: Lots Nos. 5 and 6 each sixty feet front on Canal Carondelet by one hundred and twenty feet in depth and lot No. 7 fifty nine feet,

eight inches front on Claiborne Street by one hundred and twenty feet in depth.

One large mud flats, two small ditto, two old boilers, part of an old engine, one pair mud spoons, a lot of old iron, the contents of a blacksmith's shop, tools &c., one cart and horse and harness, one pile driver and hammer, a lot of old lumber from bath house, a lot of new lumber, a lot of timber in the Bayou, the contents of the office, viz:—one iron safe one large table two large armoirs, one press and seal, one small table, one dozen chairs."

To have and to hold the said Basin, Canal, Bayou, Roads and other properties hereinbefore described unto the said New Orleans Canal and Navigation Company their successors to their proper use and behoof forever.

This sale and transfer is made and accepted for the sum and price and on the terms and subject to the conditions set forth in the said act of sale from said Halsey, Liquidating Commissioner to said

James Currie, Agent, made before the undersigned Notary
115 on said 28th, of June last (1852) which price and condition of said act being in the following words and figures, viz:—For the sum and price of sixty nine thousand dollars (\$69,000) payable one tenth cash and the remainder in equal annual instalments from one to twenty years, accordingly the said Mr. Currie has paid unto the said Mr. Halsey, liquidating commissioner as aforesaid in current money the sum of six thousand, nine hundred dollars (\$6,900) and for the balance of the purchase money he furnished twenty several bonds payable respectively at from one to twenty years after date of the 24th, inst., each for the sum of three thousand one hundred and five dollars (\$3,105) with interest from date until full, and final payment at the rate of five per cent per annum", and accordingly the said New Orleans Canal and Navigation Company through their said attorney E. H. Durell, Esq., has this day paid in current money unto the said J. Blodgett Britton, Esq., (attorney for the said Archibald Robertson and others) for whom as their agent the said James Currie has paid the said sum of six thousand nine hundred dollars unto the said J. S. Halsey, Liquidating Commissioner, the receipt whereof is hereby acknowledged, and the said company by its said attorney in fact does hereby assume and promises to pay at their respective — each of the twenty above described bonds for three thousand and one hundred and five dollars each with interest from date until full and final payment at the rate of five per cent per annum, and the said New Orleans Canal and Navigation Company, also by their said attorney does hereby assume the special mortgage which was granted by the said James Currie Agent, to and in favor of the said Jacob S. Halsey, Liquidating Commissioner as aforesaid, who retains the vendor's privilege on the same the property hereinabove described and sold, promising not to alienate, deteriorate or in any manner whatever encumber the same or any part thereof to the prejudice of the mortgage now assumed.

And the said New Orleans Canal and Navigation Company
116 by their attorney aforesaid, further assumes the condition of said sale by the said liquidating commissioners made of

the rights, titles, claims and interest of said late Orleans Navigation Company by said act of June 28th, 1852, before me Notary in obedience to the fourth section of the said act of the Legislature of this State approved 18th of March, 1852, viz:—That if the purchasers shall organize themselves into a corporation under the laws of this State for a term of twenty five years, for the purpose of carrying out and effecting all the improvements detailed and described in the reports and plans known as Harrison's report and plans, including the construction of a New Basin at the junction of Canal Carondelet and Bayou St. John of the depth and dimensions set forth in said report and plans, and shall actually complete all said improvements within the term of three years from the date of their charter, then the said corporation shall be entitled to receive and exact all such tolls and revenues for the use of said Canal, Bayou and Roads as the Orleans Navigation Company was entitled to receive under its charter; provided that, at the end of said term of twenty five years, the State of Louisiana shall have the option either of granting to said corporation a renewal of the rights of receiving said tolls for a second term of twenty five years or of purchasing for itself, the property and improvements of the company at the appraised value thereof And provided further that if said second term of twenty five years be granted, the whole property shall revert to the State of Louisiana at the end of said second term without any payment or compensation made to said company".

And the said New Orleans Canal and Navigation Company by their aforesaid attorney, further assumes and becomes bound by the condition in said act of 28th June last before me Notary, required in said sale and transfer in compliance with the Fifth

117 Section of said last recited act of the Legislature of this State which is as follows, viz: That any corporation formed under the provisions of the preceding section shall be entitled to demand and receive said tolls from the time of its organization, on furnishing bond to the State Treasurer in the sum of fifty thousand dollars, to secure the completion of all the improvements aforesaid within said term of three years."

And also the said New Orleans Canal and Navigation Company by their said attorney, also assumes and becomes bound by the Sixth Section of said act of the Legislature of this State, embodied in said act of 28th June last before me, Notary, which is as follows, viz:—That if the works and improvements to be made by the purchaser be not begun within six months and completed within five years, all the right, title and interest acquired by the said purchaser under the provisions of this act, together with all the improvements that may be made shall vest in and belong to the State.

And the said New Orleans Canal and Navigation Company by their said attorney hereby assumes and becomes obligated to comply with and perform all and every act of whatever kind and nature stipulated, contracted and agreed by the said James Currie agent with said Halsey, Liquidator, by himself and by his said principals and their assigns to be done and performed; and also all such as by law the holders or owners of said rights and properties may be called upon and required to do.

By the annexed certificate of the Recorder of Mortgages for this Parish bearing even date herewith there appears to be no mortgage existing standing in the name of James Currie and recorded against the property and claims herein described and conveyed other than the one by him granted by act before me Notary of the 28th June 1852, in favor of Jacob S. Halsey, Liquidator of the Orleans Navigation Company to secure the payment of sixty two thousand one hundred dollars with interest at the rate of five per cent per annum from date till paid, the whole in conformity with said act, and which mortgage as has above appeared was assumed by the present transferries. B. 60 F. 512.

And by the annexed certificate of the register of Conveyances for this City also bearing even date herewith, it does not appear that the said James Currie has ever alienated the said property herein above described since his purchase of the same, as aforesaid, but that by act before me Notary of the 30th of June, 1852 Recorded in said Conveyance Office in Book 60 folio 182, said Currie declared the said purchaser by said act of 28th of June 1852 was by him made for and on account of Archibald Robertson, Oliver Hough, Alexander Osbourn, Stewart Newall and his associates of Philadelphia and Currie and Company and their associates of New York, and that the said Currie has not alienated the same in any other manner, nor that the same or any part thereof, has been alienated before by either the said Archibald Robertson, Oliver Hough, Alexander Osbourn, Stewart Newall and Currie and Co. and Bernard Douredoure, James A. Cummings, Isaac D. Knight and Samuel Newall or by all of them.

Thus done and passed at my office at New Orleans aforesaid in presence of George Clark, and William Clark competent witnesses who have hereunto signed their names together with the said appearers and me Notary.

J. BLODGETT BRITTON,

Att'y for Archibald Robertson, Oliver Hough, Alexander Osbourn, Stewart Newell, B. Douredoure, J. A. Cummings, Isaac D. Knight, and Samuel Newell.

J. BLODGETT BRITTON,

Att'y for Judah P. Currie, Chas. P. Currie, and Wm. Currie.

EDW. H. DURELL,

Attorneys for the New Orleans Canal & Navigation Co.

GEORGE CLARK.
WILLIAM CLARK.

R. BRENAN, *Not. Pub.*

119 I, Register of Conveyances, certify that the foregoing act
199. has been this day recorded in my office in Book No. 58 fo.

New Orleans, Oct. 30th, 1852.

[SEAL.]

F. B. VINOT, *D'y Reg.*

STATE OF LOUISIANA,

Parish of Orleans:

I, the undersigned, Peter Stiff, Custodian of Notarial, Records and in for the Parish of Orleans and State of La. do hereby certify that the above and foregoing is a true and correct copy of the original on file and of Record in my Office.

Witness my hand and official seal, this 22nd day of January, 1910.

(Sg.)

[SEAL.]

PETER STIFF,

Custodian of Notarial Records.

EXHIBIT D "10."

Certified Copy of Extract of Minutes of Meeting of Stockholders of the Carondelet Canal and Navigation Co. of March 10, 1908, Showing the Election of Messrs. A. J. Davidson, Hans Widmer, and J. H. Elliott, Liquidating Commissioners, Offered in Evidence by Counsel for Defendant.

Filed March 9, 1910.

I, William P. Nicholls, Secretary of the Carondelet Canal and Navigation Company, do hereby certify that the following is a true and correct extract from the minutes of a meeting of the stockholders of this Company held at the Company's office in the City of New Orleans on March 10, 1908, viz: to-wit:

Mr. B. T. Waldo, seconded, by Mr. I. T. Peterson, moved that the meeting proceed to the election of three commissioners of Liquidation, and nominated Messrs. A. J. Davidson, Hans Widmer and J. H. Elliott. The chairman directed that the roll of the stockholders be called and announced that Messrs. A. J. Davidson and Hans Widmer and J. H. Elliott were unanimously elected commissioners of Liquidation by the following vote: Wm. C. Cox represented by W. C. Dufour, 1,235 shares. Wm. C. Dufour 2 shares, Fritz Jahncke, 24 shares, George Lhote 1 share, W. P. Nicholls 2 shares, Ivy T. Preston 1 share, Roby H. Robertson 229 shares Robert H. Robertson, Trustee 150 shares, A. J. Rossi, 1 share, J. V. Roca, 1 share, Estate of Geo. G. Wheelock, represented by D. L. Gagnet 77 shares and Hans Widmer, represented by B. T. Waldo, 20 shares; in all 1,743 shares, more than one half of the capital stock of the company".

In testimony whereof I have hereunto affixed my signature and set the seal of this company, upon this, the 26th day of January, 1910.

(Sg.)

[SEAL.]

W. P. NICHOLLS,

*Secretary Carondelet Canal &
Navigation Company.*

EXHIBIT D "11."

Certified Copy of Extract of Minutes of Meeting of Stockholders of the Carondelet Canal and Navigation Co. of March 10, 1908, Showing the Election of Mr. Philip Werlein as Commissioner to Fix Compensation and Award to Company, Offered in Evidence by Counsel for Defendant.

Filed March 9, 1910.

I, William P. Nicholls, Secretary of the Carondelet Canal and Navigation Company, do hereby certify that the following is a true and correct extract from the minutes of a meeting of the stockholders of this company held at the Company Office in the City of New Orleans, on March 10th, 1908, viz: to-wit:

"Mr. B. T. Waldo, seconded by Mr. I. T. Peterson, nominated Mr. Philip Werlein, as the Commissioner to be appointed by
121 this Company to constitute a commission to fix the compensation and award due to the company under section four of act 74 of 1858, and he was unanimously named by the casting of the 1743 votes present and represented.

In testimony whereof, I have hereunto affixed my signature and set the seal of this Company, upon this, the 26th day of January, 1910.

(Sg.)
[SEAL.]

W. P. NICHOLLS,
*Secretary of the Carondelet Canal
and Navigation Company.*

EXHIBIT D "12."

Copy of Letter of Date March 10, 1908, to Governor Newton C. Blanchard from Messrs. Farrar, Jonas, Kruttschnitt & Goldberg, Miller, Dufour & Dufour and Benjamin T. Waldo, Attorneys for Liquidating Commissioners Carondelet Canal and Navigation Company, Notifying the Governor of the Election of Liquidating Commissioners and Commissioner of -ward, & etc., Offered in Evidence by Counsel for Defendant.

Filed March 9, 1910.

MARCH 10, '08.

Honorable Newton C. Blanchard, Governor of Louisiana, Baton Rouge, La.

SIR: You are hereby respectfully notified that at a meeting of the stockholders of the Carondelet Canal and Navigation Company held on March 10, 1908, Messrs. A. J. Davidson, Hans Widmer and J. H. Elliott were appointed Liquidators of said Company, and Mr. Philip Werlein was appointed Commissioner to appraise the property in

122 order to determine the amount to be paid by the State before it takes over the property. You are requested to name at your earliest convenience, the commissioner to be appointed by the State and also direct the attorney General to join the Liquidators in applying to the Civil District Court for the appointment of the third Commissioner.

Respectfully,

(Sg.)

FARRAR, JONAS, KRUTTSCHNITT
AND GOLDBERG.
MILLER, DUFOUR & DUFOUR.
BENJ. T. WALDO.

W. C. D.—M.

EXHIBIT "D-13."

(Certified Copy of Act of Sale and Compromise, Joseph Genois and Bernard Genois to New Orleans Canal & Navigation Co. Before Adolphe Boudousquie, N. P., May 27, 1853), Offered in Evidence By Counsel for Defendants.

Filed March 9th, 1910.

No. 139, Bis.

27TH MAY, 1853.

Sale and Compromise.

Jos. Genois, Jr., & Bern'd Genois to New Orleans Canal & Navigation Co.

UNITED STATES OF AMERICA,
State of Louisiana:

Before me, Adolphe Boudousquie, Notary Public in and for the City and Parish of Orleans, personally came and appeared: Messrs. Joseph Genois, Jr. and Philippi Avegno, Jr., the former acting in his own behalf and the latter as agent of Mr. Bernard Genois late of this Parish and now a resident of Oregon, by virtue of a power of Attorney dated December 11th, 1848, now of Record in the Archives of Joseph Cuvillier Esq., Notary Public of this City, which said appearers, together with Messrs. Phineas C. Wright and Edward H. Durell, of this City, herein acting as the agents and resident Directors of the "New Orleans Canal & Navigation Company jointly
123 declared that; Whereas two certain Suits pending before the First District Court of New Orleans, entitled respectively "B. & J. Genois, Jr. vs. N. O. Canal & Navigation Company" No. 8495 and "New Orleans Canal and Navigation Company vs. B. & J. Genois, Jr., No. 8599" have on the 20th instant been mutually compromised between the parties litigant, the following Articles of agreement have been and are hereby set forth and accepted by said Parties, in order to carry out the said Compromise, to-wit:

Article First. Messrs. Joseph Genois, Jr., in his own name, and Philippe Avegno, Jr., as agent of Mr. Bernard Genois, do hereby sell assign and transfer in fee simple, unto the "New Orleans Canal & Navigation Company" all that portion of Land fronting on their property situate at the Mouth of Bayou St. John, in the rear of the property known as the "Old Fort," and measuring Four hundred and Eighty feet front on said Bayou, on a depth which for the two upper Arpents runs forty arpents and for the one hundred and twenty lower feet, runs only three arpents; which said portion of land presently sold comprises per actual measurement: Forty Nine Thousand One Hundred and twenty square feet, as the same is set forth between the lines marked A. B. C. D. on the sketch hereto annexed, and by reference made part of these presents. Which said Sale and transfer is hereby accepted by Messrs. P. C. Wright and Edward H. Durell on behalf of said New Orleans Canal & Navigation Company."

Article Second. It is well understood that all that portion lying between letters C. D. E. F. of said plan and marked "line of Cut" shall be used and dug up by said Company for the enlargement of the Bayou and for no other purposes.

Article Third. The New Orleans Canal and Navigation Company, does by these presents bind and obligates itself to constrict at their own expense the Levee, Tow path and Road, indicated on the hereto annexed sketch in such a manner and at such height as will
124 be required for the safe embankment of said Bayou.

Article Fourth. The said Company further binds and obligates itself, and this under the penalty of all actual damages, to fill up and level within Six months from the date of these presents, and to such a height as may be thought fit by the City Surveyor to protect it from overflow, the whole front of said property beyond the line marked A. B. and to a depth of One Hundred and twenty feet; the said work to be done at the exclusive cost and through the sole agency of the said Company.

Article Fifth. The said Company further agrees to pay and has actually paid unto the said Joseph Genois, Jr. and Philippe Avegno Jr., the sum of One Thousand Dollars, Four hundred Dollars whereof are to go in satisfaction of the fee of Henry St. Paul, Counsel of said B. & J. Genois; for the whole of said sum of One Thousand Dollars, these presents shall act as a full acquittance and discharge.

Article Sixth. Messrs. Joseph Genois, Jr. and Philippe Avegno, Jr. agent shall be entitled to the old materials of the houses, fences &c. now on the line of Cut or on the line of the tow path or road, and the Company shall provide a suitable place where said materials may be piled up until the land be fit to be built on.

Article Seventh. The Company finally shall pay all the costs of Court accrued in the suits compromised by these presents.

According to a certificate of the Recorder of Mortgages, of even date herewith, it appears that the One undivided half of the two upper arpents belonging to Joseph Genois, Jr. is subject to a conventional mortgage in favor of Thomy Lafon, as per act before E. A. Bienvenu, Not. Pub. dated March 18th, 1853, being for a

note of Five hundred and fifty Dollars, payable one year from the date of said act;

And now the said Joseph Genois, Jr., declares that he will well and truly pay at maturity the note aforesaid the Security whereof still remains upon the whole of his interest in the Balance of the property not sold by these presents.

And as an additional guarantee against any trouble or eviction whatever, Henry St. Paul, of this City does hereby agree to stand Surety to said J. Genois, Jr., for the faithful performance of the foregoing obligation.

It is further understood between the parties that the removal of the buildings mentioned in Article 6th of these presents shall be at the cost of Messrs. B. & J. Genois, Jr., and shall take place as soon as a suitable spot shall have been prepared to receive the old Materials.

Thus done and passed at my Office; this Twenty seventh day of May, in the year one thousand eight hundred and fifty three in presence of Messrs. G. Duplantier and J. Oxnard, who, as competent witnesses have signed these presents together with the aforesaid parties of the first and second parts, and me Notary, after due reading thereof.

Ppro. BERNARD GENOIS.
P. AVEGNO, JR.
JOS. GENOIS, JR.
HENRY ST. PAUL.
P. C. WRIGHT.
EDW. H. DURELL.

JOHN OXNARD.
G. DUPLANTIER.

A. BOUDOUSQUIE, *Not. Pub.*

I Registered of Conveyances Certify the present act has been this day Recorded in my Office in Book No. 63 Folios 279, 280, 281.

New Orleans, 27th, August 1853.

BERNARD MARIGNY, *Rec.*

125 STATE OF LOUISIANA,
Parish of Orleans:

I, the undersigned, Peter Stiff, Custodian of Notarial Records in and for the Parish of Orleans and State of La., do hereby certify that the above and foregoing is a true and correct copy of the original on file and of Record in my Office.

Witness my hand and official seal this 26th day of January, 1910.

(Signed)
[SEAL.]

PETER STIFFT,
Custodian of Notarial Records.

EXHIBIT MARKED "D-14."

(Certified Copy of Extract From Minutes of Meeting of Board of Directors of the Carondelet Canal & Navigation Co. of March 1st, 1858), Offered in Evidence by Counsel for Defendants.

Filed March 9th, 1910.

NEW ORLEANS, LA., March 7th, 1910.

Extract from Minute Book No. 1, Folio 22, of the Carondelet Canal and Navigation Company.

NEW ORLEANS, March 1st, 1858.

At a special meeting of the Board of Directors held at the office of R. Gardere, Esq., No. 39 Exchange Alley, this day, were present Messrs. R. Gardere, W. W. Montgomery, Geo. Urquhart R. M. David, L. F. Geners and W. Nicol. The President briefly explained to the Board the object of the meeting which was to take their advice to know what steps had to be taken in regard to the Bill now before the Legislature. When on Motion of Mr. Geo. Urquhart seconded by Mr. W. W. Montgomery, it was resolved that the President be authorized to take such steps as he may deem necessary to place the matter in its true light before the Legislature.

127 On motion the Board adjourned.

(Signed)

R. GARDERE, *Pres'd't.*

LS. GAGNET, *Secretary.*

A true copy.

Attest:

(Signed) W. P. NICHOLLS, *Sec'y.*

[SEAL.]

EXHIBIT MARKED "D-15."

(Certified Copy of Extract From Minutes of Meeting of Board of Directors of the Carondelet Canal & Navigation Co. of March 8th, 1858), Offered in Evidence by Counsel for Defendants.

Filed March 9th, 1910.

NEW ORLEANS, LA., March 7th, 1910.

Extracts from Minute Book No. 1, Fol. 22, of the Carondelet Canal and Navigation Company.

"NEW ORLEANS, March 7th, 1858.

At a regular stated meeting of the Board of Directors held this day were present: Messrs. R. Gardere, Geo. Urquhart, R. M. David, L. F. Genere, P. Lobit, and P. H. Mousseaux. The minutes of the meetings held on the 10th of February and March 1st were read and approved.

The President submitted to the Board letter from H. St. Paul, Esq., tendering his resignation as director and attorney of the Company. When on motion of Mr. R. M. David seconded by Mr. Geo.

Urquhart it was unanimously resolved that the resignation of Mr. H. St. Paul as a director and attorney of this Company be and is hereby refused.

On motion of Mr. L. F. Geners seconded by Mr. David it was unanimously Resolved that the thanks of this Board be and they are hereby tendered to H. St. Paul, Esq., for his untiring exertions in the State Legislature to forward the interest of this Company in the passage of the act relative to the Carondelet Canal & Navigation Company of New Orleans.

On motion of Geo. Urquhart, Esq., seconded by Mr. P. Lobit, Be it Resolved that a copy of said resolution be forwarded to Mr. H. St. Paul.

On Motion the Board adjourned.

(Signed)

R. GARDERE, *Pres'd't.*

LS. GAGNET, *Secretary.*

A True Copy—Attest:

(Signed) W. P. NICHOLLS, *Sec'y.*

EXHIBIT MARKED "D-16."

(Statement of Amounts Expended by Carondelet Canal and Navigation Company for the Improvement of the Property and Navigation). Offered in Evidence by Counsel for Defendants.

Filed March 9th, 1910.

NEW ORLEANS, LA., March 7th, 1910.

Amounts Expended by Carondelet Canal and Navigation Company for the Improvement of the Property and Navigation.

Charged to Profit & Loss a/c.

| | | |
|---------------------------------------|-------------|--------------|
| Bayou St. John Work | \$20,481.53 | |
| Bridge at Lake end | 475.19 | |
| Carondelet Canal Navigation Co..... | 1,971.85 | |
| 129 | | |
| Carondelet Canal | 18,015.29 | |
| Lake Harbor | 12,550.74 | |
| " " repair a/c | 98,186.74 | |
| | | \$151,681.34 |
| Carried in the balances: | | |
| Carondelet Canal & Navigation Co..... | 84,647.17 | |
| Lake Harbor | 50,000.00 | |
| Turnpike road | 8,604.45 | |
| | | 143,251.62 |
| | | \$294,932.96 |

This does not include movables, real estate and \$100,000 stock issued to Agts. of Old Co.

(Signed)

W. P. NICHOLLS,
Supt. & Acct. Sec'y.

| Month. | Day. | Particulars. | Debit. | Credit. | Balance. |
|--------|------|--------------|--------|-----------------|----------|
| Oct. | 2. | " | 11 | 590.00 | 590.00 |
| | 3. | " | 11 | 655.00 | 655.00 |
| | 5. | " | 11 | 400.00 | 400.00 |
| | 7. | " | 11 | 80.00 | 80.00 |
| | 8. | " | 11 | 1,200.00 | 1,200.00 |
| | 10. | " | 11 | 125.00 | 125.00 |
| | 13. | " | 11 | 1,340.00 | 1,340.00 |
| | | | | <u>4,390.00</u> | 4,390.00 |
| | 27. | " | 13 | 340.00 | 340.00 |
| | 28. | " | 13 | 160.00 | 160.00 |
| | | | | <u>500.00</u> | 500.00 |
| | | | | 4,890.00 | 4,890.00 |
| Nov. | 4. | " | 13 | 100.00 | 100.00 |
| | 6. | " | 14 | 400.00 | 400.00 |
| | 10. | " | 15 | 500.00 | 500.00 |
| | 11. | " | 15 | 250.00 | 250.00 |
| | 13. | " | 15 | 440.00 | 440.00 |
| | 14. | " | 15 | 600.00 | 600.00 |
| | | | | <u>1,790.00</u> | 1,790.00 |
| | 19. | " | 17 | 400.00 | 400.00 |
| | | | | <u>2,690.00</u> | 2,690.00 |
| Dec. | 3. | " | 19 | 420.00 | 420.00 |
| | 4. | " | 19 | 500.00 | 500.00 |
| | | | | <u>920.00</u> | 920.00 |
| | 17. | " | 21 | 1,200.00 | 1,200.00 |
| | " | " | 21 | 1,020.00 | 1,020.00 |

| | | | | | | | |
|-------|---------------------------|--------------------------|-------|----------|-------------------|--------------------|---------------------|
| 18. | " | 21 | ..... | 400.00 | ..... | ..... | ..... |
| 15. | " | 21 | ..... | 75.00 | 2,695.00 | ..... | ..... |
| | " | 21 | ..... | ..... | \$100.00 | \$3,715.00 | \$20,540.00 |
| Dec. | 31. | Lion & Pinsard Journal 7 | ..... | ..... | ..... | ..... | \$200.00 |
| | | | | | | <u>\$20,540.00</u> | <u>\$100,200.00</u> |
| 1858. | | | | | | | |
| Jan'y | 1. | Cash fol. | 23 | ..... | ..... | ..... | ..... |
| 25. | " | " | 25 | 1,850.00 | ..... | ..... | ..... |
| 30. | " | " | 29 | 180.00 | ..... | ..... | ..... |
| | | | | 200.00 | ..... | \$2,230.00 | ..... |
| | | | | | | | |
| 31. | Vic. Demourelle Journal 9 | ..... | ..... | ..... | ..... | ..... | 200.00 |
| " | Jean Petit 9 | ..... | ..... | ..... | ..... | ..... | 200.00 |
| " | F. Rieu 10 | ..... | ..... | ..... | ..... | ..... | 500.00 |
| Feb'y | 1. | Cash Fol. | 29 | 60.00 | ..... | ..... | ..... |
| 6. | " | " | 29 | 100.00 | ..... | 1,970.00 | ..... |
| 27. | " | " | 31 | 1,810.00 | ..... | ..... | ..... |
| | | | | | | | |
|  |  |  |  | ..... | <u>\$4,200.00</u> | <u>\$20,540.00</u> | <u>\$101,100.00</u> |

[On right margin:] No. 89,798. Civil District Court, Parish of Orleans. Filed 3/9/10. (Signed) Jos. Doyle,
Dy. Clerk.
[On right margin:] D. 17. No. 89,798. Civil District Court, Div. C. State vs. Carondelet Canal & Navigation Co.

| 131 | Brot. For'd | | | \$4,200.00 | \$20,540.00 | \$101,100.00 |
|-----------|---------------------|----------|----------|------------|-------------|--------------|
| 1858. | | | | | | |
| Feb'y 28. | F. M. Jacob Journal | 11. | | | | 80.00 |
| " | E. Morel | 11. | | | | 100.00 |
| " | F. Chaville | 12. | | | | 100.00 |
| " | E. Tortegrossa | 12. | | | | 60.00 |
| " | J. Jorvet | 12. | | | | 200.00 |
| " | P. Deverges | 12 P./L. | | | | 500.00 |
| " | Mrs. St. Romes | 12 P./L. | | | | 625.00 |
| " | R. Gardes | 14. | | | | 875.00 |
| Mch. 31. | Jos. Bruneau | 14 P./L. | | | | 175.00 |
| " | Jean Fisso | 14. | | | | 150.00 |
| " | Jules A. Blanc | 14. | | | | 280.00 |
| " | Jos. Whitmore | 14. | | | | 90.00 |
| 2. | Cash Fol. 33. | | 200.00 | | | |
| 3. | 33. | | 370.00 | | | |
| 6. | 33. | | 50.00 | | | |
| 10. | 33. | | 1,660.00 | | | |
| " | 35. | | 2,470.00 | | | |
| 15. | 35. | | 770.00 | | | |
| 16. | 35. | | 560.00 | | | |
| 17. | 35. | | 50.00 | | | |
| 18. | 37. | | 1,570.00 | | | |
| 24. | 37. | | 600.00 | | | |
| 29. | 37. | | 320.00 | | | |
| | | | | 8,620.00 | | |
| Apl. 5. | 41. | | 1,110.00 | | | |
| 21. | 41. | | 270.00 | | | |
| | | | | 1,380.00 | | |
| May 15. | 45. | | 455.00 | | | |

| | | | | | |
|-----------|---------------------------------|----------|-------------|-------------|--------------|
| 132 | Bot. For'd..... | ..... | \$37,375.00 | \$20,540.00 | \$106,560.00 |
| 1858. | | | | | |
| Oct. 31. | R. Gardere Journal Fol. 31..... | ..... | ..... | ..... | 320.00 |
| 31. | Cash Vol 71..... | 70.00 | ..... | ..... | ..... |
| | 73..... | 5,400.00 | ..... | ..... | ..... |
| | 75..... | 840.00 | ..... | ..... | ..... |
| | | | 6,310.00 | ..... | ..... |
| Nov. | | | | | |
| 1. | 77..... | 300.00 | ..... | ..... | ..... |
| 4. | 77..... | 200.00 | ..... | ..... | ..... |
| 5. | 77..... | 60.00 | ..... | ..... | ..... |
| 7. | 77..... | 120.00 | ..... | ..... | ..... |
| 13. | 77..... | 720.00 | ..... | ..... | ..... |
| 19. | 77..... | 300.00 | ..... | ..... | ..... |
| 20. | 77..... | 450.00 | 2,150.00 | ..... | ..... |
| | | | 2,595.00 | 48,430.00 | ..... |
| Dec. 31. | 79..... | ..... | ..... | ..... | ..... |
| 31. | Hy St. Paul Journal 36..... | ..... | ..... | ..... | 180.00 |
| " | J. L. Bouny 36 P./L..... | ..... | ..... | ..... | 95.00 |
|  |  |  | ..... | 68,970.00 | 107,155.00 |
| 1859. | | | | | |
| Jan'y 31. | F. Cousin Journal 40..... | ..... | ..... | ..... | 250.00 |
| | D. Henry..... | ..... | ..... | ..... | 80.00 |
| | F. Levasseur 40..... | ..... | ..... | ..... | 253.73 |
| 3. | Cash Fol. 83..... | 200.00 | ..... | ..... | ..... |
| 3. | 85..... | 3,011.27 | 3,211.27 | ..... | ..... |

| | | | | | | | |
|------------|-----|--------|-------|-------|----------|-------|-------|
| 7. | 139 | 200.00 | ..... | ..... | ..... | ..... | ..... |
| 8. | 139 | 650.00 | ..... | ..... | ..... | ..... | ..... |
| 10. | 139 | 40.00 | ..... | ..... | ..... | ..... | ..... |
| 12. | 139 | 500.00 | ..... | ..... | ..... | ..... | ..... |
| | | | | | 6,200.00 | ..... | ..... |
| Apl. 2. | 141 | 350.00 | ..... | ..... | ..... | ..... | ..... |
| " | 143 | 50.00 | ..... | ..... | ..... | ..... | ..... |
| 4. | 143 | 100.00 | ..... | ..... | ..... | ..... | ..... |
| 5. | 143 | 410.00 | ..... | ..... | ..... | ..... | ..... |
| 7. | 143 | 280.00 | ..... | ..... | ..... | ..... | ..... |
| | | | | | 1,190.00 | ..... | ..... |
| May. 5. | 147 | 250.00 | ..... | ..... | ..... | ..... | ..... |
| 8. | 149 | 180.00 | ..... | ..... | ..... | ..... | ..... |
| 12. | 149 | 220.00 | ..... | ..... | ..... | ..... | ..... |
| 15. | 149 | 250.00 | ..... | ..... | ..... | ..... | ..... |
| 22. | 149 | 150.00 | ..... | ..... | ..... | ..... | ..... |
| 30. | 151 | 310.00 | ..... | ..... | ..... | ..... | ..... |
| | | | | | 1,330.00 | ..... | ..... |
| June 22. | 153 | 300.00 | ..... | ..... | ..... | ..... | ..... |
| 25. | 155 | 100.00 | ..... | ..... | ..... | ..... | ..... |
| | | | | | 400.00 | ..... | ..... |
| July 1/5. | 157 | ..... | ..... | ..... | ..... | ..... | ..... |
| Aug. 1/6. | 163 | ..... | ..... | ..... | 200.00 | ..... | ..... |
| Oct. 1. | 171 | ..... | ..... | ..... | 475.00 | ..... | ..... |
| Nov. 1/30. | 173 | 550.00 | ..... | ..... | 300.00 | ..... | ..... |
| | 175 | 350.00 | ..... | ..... | ..... | ..... | ..... |
| | | | | | 900.00 | ..... | ..... |

| | | | | |
|--|----------|--------|------------|--------------|
| Dec. 1/31. | 177..... | 30.00 | 11,830.00 | ..... |
|  |  | ..... | 105,071.27 | 110,158.73 |
| 1861. | | | | |
| Jan'y 1/3. Cash Fol. 181..... | | 120.00 | ..... | ..... |
| Feb'y 28. Hy. St. Paul Journal 94..... |  | ..... | ..... | 40.00 |
| L. Surgi 94..... |  | ..... | ..... | 375.00 |
| Wm. Henry 94..... |  | ..... | ..... | 100.00 |
| Mch. 4. Cash Fol. 187..... | | 20.00 | 140.00 | ..... |
|  |  | ..... | 105,211.27 | 110,673.73 |
| 1872. | | | | |
| Mch. 11. Cash Fol. 253..... |  | ..... | 50.00 | ..... |
|  |  | ..... | 105,261.27 | 215,935.00 |
|  |  | ..... | ..... | 1,061.75 |
| Charged Profit & Loss a/c..... |  | ..... | ..... | \$214,873.25 |
| Balance..... |  | ..... | ..... |  |

134 United States Circuit Court, Eastern District of Louisiana.

In Equity. No. 13244.

GEORGE G. WHEELOCK et al.

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY et al.

Extract from Report of E. D. Saunders, Esq., Special Master.

Filed July 13, 1904.

II.

The decision in this case must be governed by the determination of the question,—what are the rights and property of the Carondelet Canal & Navigation Company? We must ascertain what title, if any, that Company has to the streets running along each side of the Canal; what right of control, if any, the Company has over those streets; and what are its franchises and privileges. Until these preliminary questions are settled, we cannot say whether any of the rights of the Canal Company have been violated. And if it should appear that no right of the Company is being violated by the acts and constructions of the Railroad Companies, it will then be immaterial to inquire what were the motives or purposes of the Railroad Companies in acquiring the ownership of the majority of the stock of the Canal Company.

It will be necessary to give a brief history of the Canal Carondelet and of the several corporations which have successively had charge thereof, in order to ascertain what are the rights, franchises and property of the present Canal Company.

III.

a. Original Dedication and Construction. In 1794, when Louisiana belonged to Spain, the Baron de Carondelet, then
135 Governor of the province, decided to dig a canal, from the point that is now occupied by the Old Basin, out to the Bayou St. John. All the land through which this canal was to be built was then public property. The object of the canal was twofold, namely, to drain the water from what was then the rear of the city, and to enable schooners to reach the city, instead of discharging their cargoes at the mouth of the Bayou St. John. That is, the Canal was to serve the double purpose of a drainage canal and of a navigation canal.

From the evidence reported in a suit decided in 1811 (1 Mart. O. S. 274) it appears that the Canal was dug partly by convicts and partly by negro slaves, whose labor was contributed without charge by the inhabitants of the city.

Built thus at the general charge, through public lands and for public purposes, the Canal was beyond any controversy originally public property.

It would appear, from the statements in the case just referred to, that the Canal was first dug to a width of 6 feet, but was subsequently widened, and that, in 1803, when the United States acquired Louisiana, its width was about 15 feet.

It would seem that the Baron de Carondelet, by some instrument which is no longer extant, and the exact terms of which have not been preserved, reserved over the public domain a strip of land from what is now the Old Basin to Bayou St. John for a canal and for streets or roads along the Canal.

The evidence in the case above cited speaks of 30 feet as the intended width of the Canal, and also speaks of public roads or promenades being reserved along the Canal. But the width of these roads is not mentioned.

The defendant has offered in evidence copies of old deeds, grants and confirmations of title, to lands bounded by the Canal reservation, which show that at various points on both sides of the Canal the width of the strip reserved for a road on each side is always stated or assumed to be 60 feet from the water's edge.

136 Thus, the confirmation by the Land Commissioners of the claim of F. L. L. Dorgenois, under occupation in 1803, (Am. St. Papers, Vol. II, p. 283) describes the tract confirmed as one fronting on the Bayou St. John Road, "and extending back as far as within 60 feet of the Canal Carondelet." This would tend to show that probably in 1803 the roadway reserved along the Canal was recognized as having a width of 60 feet.

Again, in the suit of Fleitas vs. Mayor, 1 Mart. (N. S.) 430, decided in 1823, the court say:

"The petitioners claim title to a tract of land, in the rear of the City of New Orleans, 'containing two acres in front, on the space of 60 feet reserved on the Canal Carondelet, by eighteen in depth,' by virtue of a grant to Carlos Guardiola, dated 20th May, 1800."

This claim was sustained by the judgment of the court, thus recognizing a grant by the Spanish Government in 1800, in which the width of the reserved roadway along the Canal is stated to be 60 feet.

On February 23rd, 1820, the city purchased from B. Macarty a tract of land containing a little over 8 arpents and fronting on the road along the Canal Carondelet. The description reads:

"Une portion de terre, suitée sur le bord du Canal Carondelet, et a la distance de 619 toises de l'alignement sud est de la rue du Bassin, la dite portion mesurant 90 toises de face sur le chemin (qui) est de 60 pieds de large dans toute la longueur * * *"

The relative "qui" was evidently omitted through inadvertence in the above passage.

Attached to the deed is a map which shows the line of the road running parallel to the Canal from the Old Basin to the tract sold, nearly 1300 yards. The scale on this map bears out the statement that the roadway along the Canal is 60 feet wide its entire
137 length.

The defendants have offered in evidence a copy of the patent by the Spanish Government to Carlos Guardiola, of date May 20th, 1801, in which the tract conveyed is described as bounded

by "the reserved road 60 feet wide on the bank of the Canal Carondelet" (lindando este pano de tierra can el camino reservado de sesenta pies de ancho a la orillal del Canal Carondelet.)

Assuming from the foregoing reference in ancient deeds and decisions that the width of the Canal was intended to be 30 feet, and the width of the roadway on each side was intended to be 60 feet, all French measure, we should expect to find the property lines parallel to the Canal 150 feet, French measure, apart. A number of maps, offered in evidence by defendants, show, by the scales on them, that the distance between the property lines has always been regarded as 150 feet, French Measure.

Map of Joseph Pilie, City Surveyor, dated January 25th, 1826; Plan of Sorgi, deposited with O. H. Perry, N. P., on April 20th, 1850; Plan of Joseph Pilie, April 14th, 1829.

The city has widened the street on the south side for some distance, and, allowing for this increased width, the original distance between the property lines would be approximately 150 feet, French Measure.

See too affidavit E. H. Farrar.

Another reason for believing that the width of the roadways along the Canal was 60 feet, is that the Act of Congress of March 3rd, 1807, confirming the claim of New Orleans to certain commons, makes it a condition of the confirmation that the city shall reserve from the lands so confirmed a strip for the continuation of the Canal from the Old Basin to the river, and shall reserve a public highway of 60 feet on each side of the continued Canal. The width of the public highways reserved in this Act of Congress was no doubt the same as that of the highways bordering the Canal up to the Basin.

138 Accordingly I find:

a. That the exact terms of the order of the Baron de Carondelet dedicating, or reserving, a strip of land for a Canal from the Old Basin to the Bayou St. John are not known.

b. That it seems morally certain, from the references in the old deeds, grants, old maps, decisions and confirmations, that the reservation was

1. Thirty (30) feet for the Canal, and

2. Sixty (60) " on each side for a public road.

c. That the said strip of 150 feet was reserved on public lands and for public purposes, and was public property.

We learn in the report of the case of State vs. Orleans Navigation Company, 11 Mart. (O. S.) p. 107, et seq., that the use of the Canal Carondelet as a drainage canal had caused it to be nearly filled up when the United States acquired Louisiana in 1803.

b. Orleans Navigation Company. 1805 to 1852. As it was important that the Canal should be enlarged and deepened, one of the first things done by the Territory Legislature was, by an act passed in 1805, to incorporate a company, to which was given the right to charge tolls on all bayous and canals in Louisiana which it should improve and render navigable. This was the "Orleans Navigation Company."

The charter obviously contemplates the digging or improving of canals anywhere in Louisiana. The mere perusal of the statute

shows that it was not enacted in the shape in which it was drafted. The 7th section speaks of "the canals and navigation hereinbefore particularly assigned." But the first six sections of the act, as enacted, do not speak of any canals whatsoever. The word "canal" does not occur anywhere in the first six sections, and the word "navigation" occurs only once—in the first clause of the 1st section, which reads:

"That there shall be established a company for the purpose of improving the inland navigation of this territory, to be called and known by the name of 'The Orleans Navigation Company.'"

The 7th Section gives the Company the right to "enter into and upon all and singular the land and lands covered with water, where they shall deem it proper to carry the canals and navigation hereinbefore particularly assigned, with or without the consent of the owners thereof, and to lay out such routes and tracks as shall be most practicable for affecting navigable canals as aforesaid by means of locks and other devices * * *."

This clause simply gives the Company the right to enter on lands covered with water for the purpose of making preliminary surveys and determining the lines and details of the canals.

When the preliminary surveys should have been made, then the Company was given the right to purchase from the owners of lands through which the canals would pass "so much thereof as they may deem necessary for the said canal, for roads or any mills, works or buildings adjoining thereto, if they can agree with such owners."

And if the owners and Company could not agree on the price, then the Company was to have the right to expropriate the land required, "provided always, that no lands shall be surveyed and appraised, unless with the consent of the owners, under this section, which shall extend more than 180 feet from the edge of such projected canal or navigation."

This section seems to me to refer only to such canals as should thereafter be surveyed and laid out by the Company. I do not

think that it can be taken as applying to the Canal Carondelet, which seems to have been reserved, with limits fixed, in 1794.

But whether the clause does or does not apply to the Canal Carondelet, its sole purpose was to give the Company the right to expropriate, to the extent of 180 feet from the water's edge of the canal, so much land as should be reasonably necessary for the construction of the projected canals.

The 9th Section fixes the tolls which the Company may charge vessels using the Bayou St. John Canal; and the 13th Section gives the Company the right "to lay out and construct, from the bridge at the Bayou settlement, a highway or road on each side of the said bayou", and if the roads so built are at least 20 feet wide and built of certain materials, then the Company was to have the right to charge certain prescribed tolls for the use thereof. The terms of the act and the express grant of the right to charge toll for the use of the roads, demonstrates that the roads built by the Company along the sides of the Bayou were to be public highways and in no sense the private property of the Canal Company.

On March 18th, 1809, the Louisiana Legislature passed an Act which declared "that the improvements of the Orleans Navigation Company shall not extend to the Bayou Plaquemine"; and on March 3rd, 1814, another Act was passed which declared "that the operations of said Company shall be confined and restricted to the improvement of the inland navigation of the island of Orleans."

The result of these two Acts was to confine the operations of the Company to the improvement of the Bayou St. John and the Canal Carondelet.

The charter of the Orleans Navigation Company gave it "perpetual succession" (Sec. 2, Act 1805). But in 1852 the charter was judicially declared forfeited for non-feasance and mal-feasance and the property of the Company was sold and its affairs liquidated.

State vs. Orleans Navigation Co. 7 A., 679.

141 The nature and extent of the rights and franchises that had been granted the Orleans Navigation Company was the subject of litigation in several suits during the existence of that company. I shall briefly state the points raised and decided in the most important of these suits.

a. Orleans Navigation Co. vs. Mayor, et al. 1 Mart. O. S., 269; id. 2 Mart. O. S., 10 & 214; A. D. 1811. Right of City of New Orleans to use Canal Carondelet as a Drainage Canal.

The use of the Canal to carry off the drainage and sewerage waters of the city tended to fill it up very rapidly, and thus greatly increased the difficulty and expense of maintaining a navigable depth of water in the Canal and Bayou. The Company, being advised by its counsel that the right of the city to use the Canal for drainage purposes had terminated, constructed dams and levees to keep the city's drainage water from running into the Canal. The city attempted to remove or break down these dams and levees and the Company enjoined them from doing so.

In the report of the trial of this suit, in the case above referred to, is found a large amount of evidence as to the original reservation, construction and purpose of the Canal. After hearing three arguments the court finally held that though the Canal was originally intended both for drainage and navigation, yet the main object in building it was to establish a navigation canal. Accordingly, when the conditions became such that it could no longer be used both as a drainage canal and as a navigation canal, then the city must cease using it as a drainage canal. The injunction, was, therefore, maintained.

The judgment in this case did nothing more than decide that the City of New Orleans had no right to use the Canal Carondelet as a Drainage Canal.

b. State vs. Orleans Navigation Co., 11 Mart. O. S. p. 38; 101; 309. A. D. 1822. Constitutionality of Charter. Right to exact tolls; Canal and Bayou not alienated to Company by the State.

142 There seems to have been from the start much dissatisfaction with the manner in which the Company kept up the Canal and Bayou, and many complaints that its tolls were exorbitant. This condition of affairs induced the Legislature, on February 16th, 1821, to in-

struct the Attorney General of Louisiana to institute proceedings "to ascertain by due and competent authority first: the constitutional validity of the aforesaid charter (of the Orleans Navigation Company.) and secondly: whether the same, if constitutional, be not forfeited by reason of the non-feasance and malfeasance, the illegal and oppressive actings and doings of said company."

Acts of 1821, p. 132.

This suit was brought and the lower court decided against the Company. The Company appealed, and the Supreme Court reversed the judgment of the lower court and held that the legislative charter of 1805 was constitutional and valid, and had not been forfeited by non-feasance. 11 M. 329: 330. The court say:

"It does not appear to us that there has been any alienation of the soil, nor that the bayou has ceased to be a public highway." 11 M. 329.

The right of the Company to exact tolls from vessels using the Bayou and Canal was sustained on the now familiar ground that such charges may lawfully be imposed on vessels that use waters which are not naturally navigable but are made so by man's labor.

This case is valuable chiefly for the copious extracts from the evidence as to the original condition of the Bayou and Canal and their condition at various dates.

c. Pontchartrain R. R. Co. vs. Orleans Navigation Co., 15 La., 404. A. D. 1840. Right of Navigation Company to build a railroad.

143 In 1839 or 1840, the Orleans Navigation Company began the construction of a railroad from the mouth of the Bayou St. John into the city. The Pontchartrain Railroad Company enjoined, on the ground that, under its legislative charter of 1830, the Pontchartrain Railroad Company had the exclusive privilege for 25 years of building and operating a railroad from Lake Pontchartrain into the city. This injunction was maintained, the Supreme Court holding that the Navigation Company's charter could not be construed as including or intending the right to build a railroad as such a species of road was unknown when their charter was granted.

d. Allard vs. Orleans Navigation Co., 12 Rob. 469. A. D. 1846. Right to build roads along banks of Bayou.

The Navigation Company contracted with Allard to build and maintain a road on the north side of the Bayou and to pay him by turning over to him the tolls collected for 22 years. Becoming dissatisfied with the manner in which Allard was keeping up the road, the Company decided to build another road on the south side of the Bayou. Allard enjoined them, on the ground that the Company was, by the necessary implications of its contract with him, bound not to build a road on the south side of the Bayou during the 22 years in which he was to collect tolls for his road. The Supreme Court held that the contract implied no such obligation in favor of Allard and therefore dissolved his injunction.

This case does nothing but construe the meaning of a contract between Allard and the Navigation Company.

e. Cronan vs. Municipality No. 1, 5 A., 537, A. D. 1850. Obligation of Navigation Company for paving of street along Canal.

The city between 1845 and 1848, had directed the street on the north bank of the Canal to be paved. The contractor sued the city for the entire cost and the city, insisting that the Navigation

144 Company owned property on one side of the street and ought to pay its pro rata, called the Navigation Company in warranty. The Navigation Company denied that it owned any property in respect of which it could be charged on the cost of paving the street.

In deciding the case, the Supreme Court say:

"The municipality alleges that it has settled with plaintiff all claims due under the contract; that the Orleans Navigation Company is owner of the property fronting on the street paved and is the only party liable under the contract and according to law, and prays that said Navigation Company be called in warranty.

The Navigation Company denies that said Company is owner of any property on the street paved, which, under existing laws, can be taxed for paving.

It appears to me that under the pleadings and evidence, but two questions are presented to the court for its decision:

1st. Is the Navigation Company the owner of property on the street paved?

2nd. If it is not, is the municipality liable for the amount?

On the first point, no evidence has been offered; the ownership of the property by the Company is expressly put at issue, and it has not been proved."

f. Municipality No. 1 vs. George Kirk, 5 A. 34. A. D. 1850. Control of streets along Canal by city.

The city had passed an Ordinance forbidding the placing in the street alongside the Canal of certain machines for landing timber and spars. Kirk resisted this ordinance, contending that the control of the streets along the Canal was vested by its charter

145 in the Navigation Company. He was evidently countenanced by the Navigation Company in the position he took.

The city sued him for violating the Ordinance. The lower court sustained the validity of the Ordinance and, on appeal, the Supreme Court sustained this judgment, saying:

"The defence principally rests upon the paramount right of the Orleans Navigation Company, to control the landing along the canal, by virtue of their title to the property.

This right is not established by sufficient evidence. But as the Navigation Company is not in court, it would not be proper to determine on their rights, except in a suit in which the title could be tested, and to which both corporations should be made parties."

Mun. No. 1 vs. George Kirk, 5A., 34.

While this case is not, technically, an adjudication against the alleged paramount right of the Navigation Company (since that Company was not a party to the suit), yet as that right could rest only on the Company's charter, and that was set up and argued by the defendant as zealously as the Company itself could have done,

it is virtually certain that the decision would have been the same if the Company had been a formal party to the litigation.

Further proof that the city exercised control over the streets along the Canal has been furnished by defendants, who have offered in evidence a number of city ordinances, adopted between 1846 and 1848, and asserting and exercising control over these streets.

On March 16th, 1846, the City Council passed a resolution directing the City Surveyor to ditch and repair the roads along the Canal.

On April 27th, 1846, the Council passed another resolution ordering a Mr. Kirk to remove from the Canal Carondelet road 146 a machine he had placed in it for drawing timber from the Canal.

On May 26th, 1846, the Council refused to permit Mr. George G. Kirk to land certain timber from the Canal.

On October 12th, 1846, the Council again refused a similar permission to Messrs. Pebbles & Kirk.

On May 28th, 1847, the Council passed an ordinance prohibiting the unloading of freight on a certain part of the Basin.

On July 3rd, 1848, Mr. Kirk again came before the Council to ask permission to land piles. The Council refused to modify the ordinance forbidding such use of the streets along the Canal.

Mr. Kirk seems then, in order to test the validity of the ordinance, to have disregarded it, denying that the city had the right by her ordinance to control the streets along the Canal. The result, as shown in the case above cited (5 A., 34), was adverse to Mr. Kirk's contention.

The Orleans Navigation Company eventually became insolvent and unable to maintain the Canal and Bayou in a navigable condition. The Louisiana Legislature then by Act 244 of 1847, p. 202, directed the Attorney General to take proceedings to forfeit its charter. This suit was decided in favor of the Company by the lower court, but, on appeal by the State, the judgment of the lower court was reversed, and the Supreme Court decided that the Company had forfeited its charter, the decree being,

"It is ordered, adjudged and decreed that the corporation of the Orleans Navigation Company has forfeited its charter; that it be dissolved, and henceforth extinct for the violation of the conditions of the act of incorporation."

State vs. Orleans Navigation Co., 7A., 679.

This judgment was rendered in February, 1852, and probably became final a few weeks or months later.

147 In anticipation of this judgment, the Legislature passed an act, approved March 18th, 1852, (Act 309 of 1852, p. 209), directing that in the event of the forfeiture of the charter by final judgment of the Supreme Court, it should be the duty of the lower court to appoint a liquidator to take possession of and sell "the entire property of said company, real and personal, movable and immovable." Sec. 1. The 4th Section of the Act provided that the purchasers might, if they wished, form a corporation, under the general incorporation laws of the State, for 25 years for the purpose of carrying out within three years the improve-

ments of the Bayou and Canal as shown in Harrison's reports and plans. This corporation was, on furnishing bond in the sum of \$50,000.00 to secure the completion of the said improvements in three years, to have the right, from the time of its organization, "to receive and exact all such tolls and revenues, for the use of said canal, bayou and road, as the Orleans Navigation Company was entitled to receive under its charter." Sects. 4 and 5 of Act 307 of 1852, p. 209.

Pursuant to the foregoing Act and to the judgment in 7 A., 679, a liquidator was appointed to the Orleans Navigation Company and the Company's property was sold, as directed by said Act 309 of 1852, p. 209. The purchasers formed themselves into a corporation, under the general incorporation laws, styled "The Orleans Canal & Navigation Company."

In the light of its Legislative Charter, of the decisions in suits affecting it, and of the City Ordinances and City action with reference to the streets along its Canal, the question now recurs,—what were the rights, privileges, franchises and property of the Orleans Navigation Company in and over the Canal Carondelet and the Bayou St. John? On that matter I find as follows:

1. It is manifest that the Company had no private ownership of, or title to, the Bayou or the Canal. The Supreme Court 148 decided that there had been no alienation to the Company, and the counsel of the Company protested that it was absurd to suppose that there had been any alienation. See 11 Mart. (O. S.) 143-4; 148-9; 151; & p. 329.

2. The streets alongside the Canal were reserved as public highways, and I find nothing in any City Ordinance or Legislative Act which gave the Navigation Company any control whatever over these roads or streets.

3. I find, on the contrary, that the city asserted and exercised control over the streets along the Canal; that its ordinances exercising such control were upheld by the Supreme Court (5 A., 34); that the Navigation Company does not appear to have objected to the city's exercise of such control over the said streets; and that the judicial averments of the Navigation Company in the paving case (5 A., 538) and in the suit to test its charter are incompatible with any claim of ownership by it of the streets or of the Canal itself.

4. Accordingly, I find that the Orleans Navigation Company had only the franchise to maintain the Canal and Bayou in a navigable condition and to charge tolls for so doing, but that the general ownership and control of the streets along the Canal was in the city, subject only to the limitation that the Navigation Company would have the right to use said streets in such reasonable way as the commerce of the Canal might require, to give access to the Canal to vehicles bringing freight thereto or removing freight therefrom.

5. I do not find that the Canal Company was ever given the right to obstruct the use of these streets by storing freight thereon; and the city ordinances, offered in evidence by the defendants, show that the city forbade any such obstruction.

149 c. New Orleans Canal & Navigation Company, 1852 to 1857.

The purchasers at the liquidation sale of the Orleans Navigation Company, in 1852, formed themselves into a corporation, under the general laws of the State, gave bond to complete within three years the required improvements on the Bayou and Canal and began work.

The charter taken out under the general incorporation laws could, of course, confer no special franchise or privilege on this corporation. The Act of 1852 did not undertake to give it any franchise in advance except that of charging the same tolls which had been charged by the Orleans Navigation Company. But the new company was under the impression that the liquidation sale of 1852 had conveyed not only the property, but also all the franchises and privileges which the Orleans Navigation Company had owned before its dissolution. Acting on this belief, the New Orleans Canal & Navigation Company brought suit to enjoin the City of New Orleans from emptying its drainage waters into the Canal and Bayou, as the right to exclude the city's drainage waters from the Canal and Bayou had been included in the franchises and privileges of the Orleans Navigation Company (1 and 2 Mart. (O. S.) *ubi supra*). But the Supreme Court decided that the New Orleans Canal & Navigation Company was not the Universal Successor of the Orleans Navigation Company, but had acquired through the liquidation sale only the property of the old company and that all the franchises and privileges, of the old company were extinguished by its forfeiture, except the franchise to charge toll, which had been kept alive by the Act of 1852. The Supreme Court say in their opinion:

"Hence the 'entire property of said company, real and personal, movable and immovable,' of which the liquidator was to take possession, and sell at auction, according to the 1st Section of 150 this Act (of 1852) only embraced corporeal things owned by and moneys due to the company. This property did not embrace the chartered rights of the company, which, before the sale, had been extinguished beyond recall." p. 365.

New Orleans Canal & Nav. Co. vs. City, 12 A., 3 364.

This decision was rendered in May, 1857. Its effect was to render the undertaking of the New Orleans Canal & Navigation Company much more onerous and expensive than had been anticipated, and probably necessitated the abandonment of the work by that Company under the conditions established by the decision, which affirmed the judgment of the District Court, adverse to the Company.

Anticipating a final decision against the Company, and probably foreseeing that such a decision would force the Company into insolvency, the Legislature, on March 16th, 1857,—Act 160 of 1857, p. 143—passed an Act to incorporate the Carondelet Canal & Navigation Company. The purpose of this Company was to take over from the New Orleans Canal & Navigation Company the improvement of the Canal and Bayou, upon terms to be agreed upon between the two companies. And, no doubt recognizing that it was essential for the new company to be vested with some of the franchises and privileges that had been enjoyed by the Orleans Navigation Company, the Act of 1857 expressly confers on the Caron-

delet Canal & Navigation Company the franchises, rights and privileges that had been given to the Orleans Navigation Company under Sections 9 to 13 of the Act of 1805. Section 10 of the Act of 1857 declares,

"That this corporation may and can take and receive, possess, hold and enjoy, all and singular the rights, privileges, franchises, immunities, powers and authority which were at any time granted to, received, possessed, enjoyed and exercised by the late 'Orleans Navigation Company,' under Sections 9, 10, 11, 12 and 13 of an Act entitled 'An Act for the improving — the inland navigation of the Territory of Orleans,' approved July 3rd, 1805, as well as those exercised and enjoyed at this time by the said New Orleans Canal & Navigation Company by Act approved March 12th, 1852."

d. Carondelet Canal & Navigation Company, A. D. 1857-1908.

The Carondelet Canal & Navigation Company, formed under Act 160 of 1857, just referred to, proceeded to purchase the property and rights of the New Orleans Canal & Navigation Company, by Act of date July 3rd, 1857, before E. Bouny, Notary. The term of the corporate existence was fixed at 25 years from 1857.

In 1858 the Legislature passed an Act—No. 74 of 1858, p. 46—which enlarged the powers of the Company and extended its corporate existence to March 10th, 1908 (Sect. 6, p. 47).

The additional powers granted the Carondelet Canal & Navigation Company were as follows:

(1) To construct lay-outs, basins and halfmoons in the roads or streets bounding the Canal. Sect. 1.

(2) To construct a railroad for freight or passengers along the Canal from the Basin to the Lake, with the right to expropriate private property, subject, however, to the proviso that,

"They shall not employ steam locomotives on said road within such limits of the city as the Common Council of New Orleans may prescribe:

And that the said road shall be subject to such general police regulations as are now or may hereafter be adopted by said Council." Sect. 2.

(3) To exclude the City from draining into the Canal or Bayou after 5 years from the passage of the Act on March 10th 1858.

The 6th Section of the Act provides that, in carrying on its works, the company is not, by that section, authorized to "use or interfere with any of the streets or highways of the city, without the consent of the Common Council of New Orleans."

This prohibition would naturally be taken to refer to the streets bordering on the Canal, as they would be the only ones the company would have any inducement or pretext of authority for interfering with.

The Carondelet Canal & Navigation Company have no privileges or rights beyond those conferred by the Acts of 1857 and 1858. And the rights and privileges conferred by Sections 7 and 8 of the Act of 1805 have not been revived and do not now belong to the present company.

The nature and extent of the rights, franchises and privileges of the Carondelet Canal & Navigation Company have been the subject of litigation in several cases.

(a) Carondelet Canal & Navigation Co. vs. Parker, 29 A., 430.

In this case it is held that the Canal Company was empowered by its charter to exact a toll from schooners using the Bayou and Canal after they had been improved by the Company, and that this charge was constitutional. The reasoning of the court is substantially the same as in the old case of the State vs. Orleans Navigation Company, 11 Mart., 309, already referred to.

(b) City vs. Carondelet Canal & Navigation Company, 36 A., 396.

This case simply holds that the capital stock of the company was exempt from taxation under Section 9 of Act 74 of 1858.

153 (c) Carondelet Canal & Navigation Company vs. Tedesco, 37 A., 100.

This case decided that Act 86 of 1884, which undertook to repeal the legislative charter of the Company granted by Act 160 of 1857 and by Act 74 of 1858, was unconstitutional and void, and accordingly the Company could continue to charge the toll on steamers using the Bayou and Canal.

(d) Carondelet Canal & Navigation Company vs. New Orleans, 38 A., 308.

It appears from the statements in this case and from the exhibits filed by the plaintiff, that in 1872 the City had attempted to dig a drainage canal parallel to and near the Canal Carondelet. The Company enjoined the construction of such Canal and the litigation terminated by an agreement of compromise between the City and the Company whereby the City agreed that the canal or ditch should not exceed certain specified dimensions and should be covered with 4 inch plank and should be cleaned, when it became necessary to clean it, in sections of not more than 100 feet at a time. Subsequently the City, in 1884, attempted to disregard this compromise agreement and the Company instituted suit, reported on appeal in the 38 A., 308, to enjoin the City from violating the compromise. The court held that the compromise of 1872 was binding upon the City, saying,

"The company has a right to require that the ditch shall be covered in every part where it was formerly covered for its convenience and that the landing between Claiborne and Galvez Streets, which it has always used and which is necessary for its operations shall be covered as it claims, and the street crossings that lead to its landing."

The substance of this decision is that the City could not under its compromise, nor, apparently apart from its compromise,
154 make any use of the street adjoining the Canal which would prevent the Canal from having reasonable access to its landing "which it has always used and which is necessary for its operations."

(e) Singer vs. Carondelet Canal & Navigation Company, 39 A., 478.

The points actually involved and necessarily decided in this case are few. The plaintiff occupied some buildings on the bank of

the Bayou St. John opposite the Spanish Fort. These buildings were known as "Over-the-Rhine." The plaintiff was in the habit of running a rope ferry between his establishment and the Spanish Fort. The defendant company after a while refused to permit the continuance of this ferry. The plaintiff thereupon enjoined the company from interfering with his ferry and with a small piece of ground on the bank of the Bayou, which ground he claimed to be the owner of. In its answer to the plaintiff's petition for an injunction the Company set up its various charter rights as follows:

After denying that the plaintiff could in any way navigate the Bayou, except subject to the directions and control of the defendant, the Company's answer continues thus:

"Respondent further answering denies that plaintiff is the owner or is entitled to the use of the land to the water edge;

Respondent avers that by its charters aforesaid it is entitled to the use of the banks of the said bayou for the purposes for which its charters were granted, to load and unload vessels, etc.; and besides it is given 20 feet in width for a road;

By its labor it has filled the space between the bank and the bayou to the extent of some 15 feet, that for over 40 years
 155 it has enclosed by means of a fence running parallel with said bayou and at a distance of some 60 feet therefrom, the land between the said fence and the bayou; that since the year 1805 the said Orleans Navigation Company and its successors, the New Orleans Canal & Navigation Company, and your respondent have been in peaceable, open, undisputed and undisturbed possession and enjoyment of said land, and respondent pleads the prescription of 10 and 30 years.

Wherefore respondent prays that the injunction prayed for be dissolved; that there be judgment for defendant as lessee of the Canal Carondelet and Bayou St. John to be entitled to the use of the land on the Bayou St. John to a depth of 60 feet from said Bayou."

It will be observed that the defendant claimed nothing more under the averments of its answer and by its prayer than the right to use of the land on the Bayou St. John to a depth of 60 feet from said Bayou, and with respect to the particular tract which was occupied by the plaintiff, the defendant claimed that it had been in actual and undisturbed possession thereof for more than 30 years. There is nothing in the pleadings whereby the defendant company specially or expressly claimed the benefit of the 7th Section of the Act of 1805 chartering the Orleans Navigation Company.

The opinion of the Supreme Court, however, seems to accord the Company much larger rights than were claimed in its pleadings or in the briefs filed before the court. For example, the Supreme Court say:

"No part of the property ever passed under parochial or municipal control. The defendant company acquired, and is the owner
 156 of all the rights of its predecessors, whatever they were—the right of use or property—in the banks of Bayou St. John to the extent of 180 feet, on either side. If they did not acquire an absolute title to the land, at the date of the grant—because the

fee was, at the date, in the United States government—the title vested in the corporation, by the Acts of 1852 and 1857. If these be regarded as questionable, it is certainly true that the State could not thereafter dispose of any part of the territory traversed by the canal, bayou and roads, to another, and free it from the claims of the corporation, under its charter." p. 483.

Now the pleadings did not raise any question whatever as to the right of the defendant company to either the use of or the property in the land along the Bayou St. John to the extent of 180 feet on either side. The printed arguments found in the briefs of the counsel in the case make no such claim. This statement of the court is evidently based upon the obviously incorrect statement made by it on the preceding page, which reads:

"Thereunder a sale was made (under the act of the Legislature of 1852) on the 28th of June, 1852, to James Currie and others, of all the rights, privileges, franchises and property of the Orleans Navigation Company, to, in, or upon Bayou St. John and Canal Carondelet, together with all of its dependencies and accessories of any and every kind, especially including all those acquired by said company under various acts of Congress."

Now it will be remembered that in 12 A., 364, the Supreme Court decided that the rights, privileges, and franchises of 157 the Orleans Navigation Company were not conveyed by the sale of June 28th, 1852, but that this sale conveyed only the property of said company. This decision in the 12 A. is not referred to by the court nor in the briefs of the counsel. It was an express adjudication upon what the sale of June 28th, 1852, did convey and upon what it did not convey, and it was in a suit between the purchaser at that sale and the City of New Orleans and the sole point involved was the effect of the said sale. The 12 A. decision, rendered just 30 years before the decision of the 39 A., could not be modified by the decision in the 39 A., which did not involve a reconsideration of the points decided in the 12 A. case. It is obvious, therefore, that what the Supreme Court say in the Singer case as to the rights of the company to the use of or property in the land to the extent of 180 feet on either side of the Bayou and Canal is obiter dictum. These statements were not required by the pleadings in the Singer case and were not relevant to any argument presented to the court.

(f) City of New Orleans vs. Carondelet Canal & Navigation Company, 42 A., 6.

This case merely decides that the Canal Company was under no obligation to erect and maintain levees along the Bayou St. John and the Canal to prevent the inflow of water through the Bayou and Canal.

The defendant has also shown that in 1847 the city expropriated property to widen the Carondelet Walk,—the street on the south side of the Canal,—and that in 1860 the city caused the Carondelet Walk to be paved from the Basin to Claiborne Street. The Canal Company was sued for its proportion of this pavement and made to pay.

I believe I have now referred to all the statutes and to all the decisions which have any bearing on the determination of the

nature and extent of the rights, franchises and privileges of the Carondelet Canal & Navigation Company. These rights are derived solely from three sources, namely:

158 1. Act 160 of 1857.

2. The purchase of the rights of the New Orleans Canal & Navigation Company, by Act before E. Bouny, Notary, July 3rd, 1857.

3. Act 74 of 1858.

1. Act 160 of 1857. This Act creates the corporation (Sect. 1); authorizes it in a certain contingency "to enter upon and take possession and control of the Canal Carondelet and Bayou St. John for the purpose of completing the works of improvement thereon, etc." (Sect. 3); and vests it with "all and singular the rights, privileges, franchises, immunities, powers and authority which were at any time granted to, received, possessed, enjoyed and exercised by the late Orleans Navigation Company under Sections 9, 10, 11, 12, and 13 of an Act entitled 'An Act for the improving the inland navigation of the Territory of Orleans' approved July 3rd, 1805, as well as those exercised and enjoyed at this time by the said New Orleans Canal & Navigation Company, by act approved March 12th, 1852."

The Supreme Court had decided that the only franchises owned by the New Orleans Canal & Navigation Company were (1) to improve the Canal and Bayou, and (2) to charge tolls on vessels using the same. There is no question that the present Company has these franchises. The only franchises that were revived and brought forward from the Act of 1805 were those contained in Sections 9, 10, 11, 12 and 13 of that Act.

Section 9 fixes the rate of tolls exigible.

Section 10 prescribes a rule for ascertaining the tonnage of the vessels tolled.

Section 11 authorizes the detention and sale of vessels for tolls due by them.

Section 12 prescribes a penalty for injuring the works or refusing to pay the tolls of the company.

159 Section 13 authorizes the Company to "lay out and construct from the bridge at the Bayou settlement, a highway or road on each side of said bayou."

The franchises given by Sections 9, 10, 11 and 12 are not involved in this suit, relating as they do solely to tolls, ascertainment of tonnage, collection of tolls and penalties for refusing to pay tolls or for injuring the works of the company. Section 13 gives a franchise to construct a toll road along the banks of the bayou. This does not involve the right to construct such a road along the banks of the canal. The grant of a franchise is strictly construed against the grantee? The statute plainly says "a road along the banks of the bayou." These terms are limitative as well as descriptive. The roads along the Canal banks had been laid out by Baron de Carondelet from the start, and it seems always to have been contemplated that they should be constructed and maintained in the same manner as the other public roads or streets. And the subsequent action of the Company and of the city both show that the grant was under-

stood by all parties as limited to the Bayou. The Company did build and maintain to this day a toll road along the Bayou. The city has built and partially paved free streets along the Canal.

The 7th Section of the Act of 1805 was not mentioned nor revived, so that, whatever rights that section may have conferred, this Company cannot assert them. 12 A., 364.

I find, therefore, that the Carondelet Canal & Navigation Company has not acquired nor derived from the Act of 1805 any rights in or to or over the streets along the Canal.

2. Purchase of Rights and Property of the New Orleans Canal & Navigation Company.

The New Orleans Canal & Navigation Company could not sell more than it had itself acquired. The case in 12 A., 364, settles beyond a controversy that the New Orleans Canal & Navigation Company had acquired only the property of the Orleans Navigation Company, and the franchises to take possession of and improve the Canal and Bayou and to charge toll. There is no dispute that these rights are now vested in the Carondelet Canal & Navigation Company.

I find, therefore, that whatever may be the terms in which the sale in question is expressed, still as a matter of law and fact, the Carondelet Canal & Navigation Company acquired no rights to, in, or over the streets along the Canal, under said sale.

3. Act 74 of 1858.

Section 1 of this Act authorizes the company "to construct layouts, basins and half moons, for steam or any other watercrafts, at any point they may deem convenient on the Bayou St. John, the basin and Canal Carondelet; and to extend the said layouts, basins and half moons on any part or portion of the road, streets or neutral grounds through which run their navigable waters," provided the Company furnishes the same additional width as it takes.

This grant is, it seems to me, subject to two conditions, one implied, and the other expressed in the Act itself.

a. The implied condition is that the Canal Company cannot interfere with the streets or take any part thereof unless such taking is reasonably necessary for the business of the Canal.

There is neither averment nor proof that the Canal Company actually needs any land now for layouts, basins or half moons, or that it is likely to need any before the expiration of its charter on March 10th, 1908.

The toll receipts of the Canal Company are an accurate index to the commerce of the Canal. A statement of these receipts, filed by defendant, shows that the average receipts from 1892 to 1899, both years included, was \$15,960.00 per annum. The receipts for the following four years were,

| | |
|-------------------------|-------------|
| For the year 1900 | \$11,054.65 |
| " " " 1901 | 8,692.10 |
| " " " 1902 | 8,485.22 |
| " " " 1903 | 7,642.82 |

And this decrease occurred under a management of the Canal Company about which there is no complaint. In view of so steady

and marked a decrease in the commerce of the Canal, and considering the absence from the bills of any averment that the Canal Company either now needs or is likely to need any additional ground for layouts, basins or half moons, I find that the evidence before me does not warrant the assumption that any such need exists or is likely to exist. I must, therefore, assume, at least for the present, that, as a matter of fact, the Company will not be inconvenienced in its operations, even if the construction of the railroads should deprive the Canal Company of an alleged right to construct layouts, basins and half moons into and in the streets through which the railroads pass.

b. The expressed condition. The 6th Section of Act 74 of 1858 reads:

"That the said Company shall have the exclusive power to follow and carry out their works in conformity with such plan or plans as they may at any time adopt, and deem best calculated to forward the interests of commerce.

Provided, That this section shall not authorize the said Company to use or interfere with any of the streets or highways of the city, without the consent of the Common Council of the City of New Orleans."

This section is awkwardly worded and its meaning is not entirely clear. I am, however, of the opinion that its purpose was to
162 declare that the Canal Company could not use or interfere with the streets without the permission of the City Council. If this construction is correct, the City Council would have the power to exclude the Canal Company from taking the streets for layouts, basins and half moons. It would, at any rate, have this power unless and until the Canal Company could show a real need for additional ground.

I, therefore, find that, under Section 6, and under the condition of fact so far shown, the right of the Canal Company to take the streets for layouts, half moons and basins, is subject to the permission of the City Council and to the ability of the Canal Company to show a real need for additional space, and that not only is no such need for additional space shown, but that the absence of any such need has been established.

I further find that until the Canal Company shows its need for additional space to be taken from the streets, the City Council is not prevented by Section 1 of Act 74 of 1858 from permitting the streets to be used for other purposes.

Section 2 of the Act of 1858 gives the Canal Company the right to construct a railroad along the bayou, Canal and Basin. The Section reads,

"Be It Further Enacted, etc., That the said Company shall have the right to construct a railroad, with single or double track, on either side of their basin, canal and the Bayou St. John, from the head of the said basin, on Toulouse Street, to the lake end, with the privilege of passing through such private property and lands as may be needed, upon due compensation made to the owners thereof, in conformity with existing laws, and they shall be authorized to

transport, on said road, freight and passengers for hire; Provided,

163 They shall not employ steam locomotives on said road, within such limits of the city as the Common Council of New Orleans may prescribe, and that the said road shall be subject to such general police regulations as are now or may hereafter be adopted by said Council."

The negation of the right to use steam locomotives without the consent of the City Council would seem to render this franchise of little value. However this may be, the fact is undisputed that the Canal Company has made no attempt to build any railroad in the 46 years that have elapsed since it was given the franchise to build. It is a serious question whether this franchise has not been abandoned and forfeited by the failure to make any use of it for nearly half a century? It is very doubtful, to say the least, whether the Canal Company can now, when its charter has less than four years to run, assert this franchise merely to prevent or embarrass the use of the street for another purpose of great public utility. For the Canal Company does not aver that it either has the financial ability, or any present intention to build any railroad. And the bill itself avers, what is perfectly obvious from the terms of the statute, that the franchise cannot be transferred by the Canal Company to any other person or corporation.

It seems to me that it is a sufficient answer to the complaint that the defendants' road may interfere with the possibility of the Canal Company's road, to say that the possibility of the Canal Company ever building a road is too remote to be a factor in the discussion. The Canal Company's franchise is not exclusive, and if it is not exclusive, it has no right to demand the exclusion of all other railroads from the street. See *S. & R. V. Ry. Co. vs. S. W. Ry. Co.*, 51 A., 814. The Supreme Court of Louisiana has held that where a corporation had acquired even the absolute ownership of certain property, it could not protect this property from expropriation by another corporation on the ground that the corporation might need
164 it and use it at some time in the future. "The defendant

Company had not used, was not using and would not probably use the property sought to be expropriated, for railroad purposes—certainly not in the near future." "There is here no use, nor any reasonable probability of future use, if testimony is to guide us, or if possible uses can be invoked at all." *Orleans & J. Ry. Co. vs. Jefferson & L. R. P. Ry. Co.*, 51 A., 1605; 1613.

A fortiori will the principles stated apply where the corporation opposes, not an absolute title, but a long unused and apparently abandoned franchise, which the corporation itself cannot make use of and which it admits it cannot transfer to any one else.

It is urged that the Railroad Companies should institute proceedings to expropriate the Canal Company's rights under Section 2 of the Act of 1858. I do not see how this can be done. The proceedings for expropriation are strictly statutory in Louisiana. The law (*R. C. C.*, Art. 2630; *Rev. Stats. Sec. 1479*) provides that if the corporations entitled to expropriate cannot agree with the "owner of any land which may be wanted, etc.", expropriation proceedings

may be instituted. Now I have already found that the Canal Company does not own the street, and has never been given any peculiar or special control thereof. All that the Canal Company has is a franchise or right to build a railroad. It has had this incorporeal right for 46 years and has not exercised it. I do not see how the statutory expropriation proceedings can be employed to divest the Canal Company of this right, if it still exists.

Finally, I am of opinion that, considering the long period—46 years—during which the Canal Company has not exercised the right to build a railroad, and the short period—about 3½ years) which the charter of that Company has yet to run;—considering further the limitations on the franchise, its admitted inalienability, and the reduced proportions of the Canal Company's business;—considering all these circumstances, the Canal Company has no longer any real interest in the franchise in question.

It is at least manifest that no present interest of the Canal Company based on its railroad franchise is affected by the construction of the defendants' tracts in the street. And for the purpose of this reference, it is enough to say that a court of equity will not interfere by a preliminary injunction, where the complainant has so long neglected to assert and make any use of his alleged franchise; where he does not propose to make any use of it, even if the preliminary injunction were granted; and where the granting of the injunction would delay a work of great public utility. The complainant's right to an injunction is lost, in such a situation, by his own laches and by the intercurrent of other large, real and immediate interests, in the public, as well as in private persons and corporations. The complainant will be remitted to such remedy, if he is entitled to any, as can be awarded after trial of the conflicting titles on their merits. See, as to complainant's lack of right to equitable or other remedies when he has no actual interest, *Hooker vs. Burr*, Adv. Shts. L. R. A., Sup. Ct. Repts., June 15th, 1904, p. 708, and cases cited.

"The court will not, however," says High, "upon an application for an interlocutory injunction, shut its eyes to the question of the probability of plaintiff ultimately establishing his demand, nor will it by injunction disturb defendant in the exercise of a legal right without a probability that plaintiff may finally maintain his right as against that of defendant * * *. And it is incumbent upon the party seeking relief by interlocutory injunction to show some clear legal or equitable rights and a well grounded apprehension of immediate injury to those rights." On Injunctions, pp. 6 & 8.

Has the Canal Company, at this day, a clear and certain title to its alleged franchise? I think not. I am of opinion that its right has lapsed for non-use of the franchise for 46 years. Be this as it may, its asserted title is too disputable and doubtful to warrant the issuance of a preliminary injunction in aid of it.

I, therefore, find that no preliminary injunction should issue in support of the Canal Company's alleged railroad franchise under

Section 2 of Act 74 of 1858, and that the officers of the Canal Company, now in charge of its affairs, are not culpable in not having demanded such injunction.

The only remaining grounds of complaint are the switch privilege and one set forth in the third supplemental petition, namely, that, whether the Canal Company has or has not any ownership of, or rights in the streets along the Canal, it is entitled to demand that those streets shall not be put to such use as will destroy or seriously impede access to the banks of the Canal for vehicles bringing goods to the Canal, or removing them therefrom.

1. Switch Privilege. I am at a loss to understand how an arrangement for interchange of traffic between the Canal and the railroad can injure the former. The bill does not allege that the banks of the Canal, where the switch is to be located, are needed for the commerce of the Canal, but only that the connection will be immensely valuable to the railroad. If the connection is valuable to the railroad, it would seem that it must be correspondingly valuable to the Canal Company, and that would imply that the switch tended to develop and increase the commerce of the Canal. This would certainly benefit the Canal Company instead of injuring it.

The suggestion that the true but undisclosed purpose of the Railroad Companies is to use the switch for storing cars, hardly needs serious consideration. If the Railroad Companies attempt to use the switch tracks for purposes other than switching cars in the interchange of traffic, it will be time to complain then.

The allegation that the presence of these switch tracks will embarrass the Company in the determination of its rights with the State, does not seem to me to be well founded. If the switches benefit the Canal, their presence will enhance its value; if they do not benefit the Canal, the State can insist upon their removal by the Railroad Companies who put them there.

The Canal Company cannot authorize the switches in the street, but can only waive its right to object to their construction along the banks.

It seems to me that the switch connection is unobjectionable.

2. Tracks as destroying or impeding right of access to Canal banks.

Section 8 of Ordinance 1615 N. C. S. granting the Terminal Company the right to lay its tracks on the streets, provides:

"That all of the above tracks, laid along and across the public highways, shall be laid along lines and grades to be approved by the City Engineer, and shall be so laid and maintained as not to interfere with or obstruct the drainage of the city or the reasonable use of said streets. Cars shall not be parked on tracks constructed along the highways aforesaid, nor shall they stand or be parked so as to obstruct any open cross street."

Section 9 provides:

"That all streets through and across which the tracks of said Company are laid, shall be kept in good order and condition between the rails and two feet on each side thereof. All pavements taken up in the laying of such tracks, shall be

relaid at the Company's cost to the satisfaction of the engineer and the Commissioner of Public Works and shall be thereafter maintained between tracks and for two feet on each side thereof on all streets not now paved, which may hereafter be paved by the city, and said Company shall pay the cost of paving between the rails and two feet on each side thereof, and the same rule shall apply to the renewal of pavements on streets now paved."

The foregoing provisions in the Ordinance seem to secure very amply that the tracks shall be laid and maintained so as not to obstruct the reasonable use of the streets by vehicles. That is, assuming that the tracks are laid and maintained as the Ordinance requires,—and I am bound to assume that they will be so laid and maintained,—then the mere presence of the tracks in the streets will not injure the approach to the Canal.

It is contended, however, that the operations of the cars on these tracks will impede vehicles going to and coming from the Canal. That this will be true to some extent is certainly true. But any increased use of the street for other purposes would make it less free to vehicles going to the Canal. The city is under no obligation to exclude all other vehicles or cars from the street simply because their presence in the street renders access to the Canal less free. The question is, not whether the street can be less conveniently used for canal purposes but whether the access to the Canal bank is seriously and unreasonably impaired by the new use to which the street is put.

In answering that question, I do not consider that the Canal Company has any right to complain that the tracks are placed in the streets or on the banks at points which are not now and have
169 practically never been used for landing purposes. I shall confine myself mainly to the examination of conditions in those reaches of the Canal bank which alone are now used for landing and receiving freight.

The defendants have filed an elaborate and exact map showing the proposed location of their tracks. From this map it appears that the tracks first approach the Canal at Hagan Avenue, at the junction of the Canal with the Bayou. At that point the Railroad Companies have already driven a few feet of sheet piling across a small indentation of the Canal. This was done by the orders of the Board of Levee Commissioners, to straighten the bank at that point. The evidence does not show any interference with the Canal Company's rights in this work or any want of authority in the Levee Commissioners to order the straightening of the Canal and Levee at that point.

In considering the matter of the alleged possible interference with the Canal Company's business resulting from the construction of the tracks in the street along the Canal, I shall divide the entire Canal bank on the southern, or western, side into three successive parts, beginning at the junction of the Canal and Bayou, at Hagan Avenue.

1. Part First. Hagan Avenue to Broad Street, 5 squares.
2. Part Second. Broad Street to Claiborne Avenue, 10 squares.

3. Part Third. Claiborne Avenue to Basin Street, 6 squares.

The only testimony as to the manner in which these different parts of the Canal bank have been actually used in the *in the* past and are actually used now for the purposes of the commerce of the Canal is contained in the deposition of W. P. Nicholls and of Vincent Ferrer, who has been a pilot on the Canal for the last 28 years and has been engaged in the schooner trade on the Canal since 1849. He is now 74 years old.

Mr. Ferrer deposes that,

1. That the west bank of Bayou St. John from the Orleans drainage machine (which is beyond the point of contact of the
170 railroad with the Canal) has never been used for loading or unloading vessels.

2. That from Hagan Avenue to Broad Street no portion of the west bank of the Canal has ever been used as a place for loading or unloading vessels "except that within the last few years a small cooper shop situated at the corner of Broad Street and Carondelet Walk, has occasionally received on the levee just below the bridge at Broad Street a small cargo of staves, which were put on the levee by said cooper shop, and wheeled across the drainage canal in wheelbarrows on a temporary gangplank, thrown across the drainage canal."

3. That prior to 1898, when a switch privilege was granted to the National Contracting Company, the west bank between Broad Street and Claiborne Avenue was used only to receive freight by only four concerns.

4. That the main landings are from Claiborne Avenue to the Basin on the east and west bank and the Basin itself.

Mr. W. P. Nicholls, Secretary of the Company for the past six years, depose- to the same effect as in the second clause of Ferrer's affidavit.

Mr. Berg deposes that there is an open drainage canal between the Canal and the street from Hagan Avenue to Broad Street.

I have already called attention to the manner in which the city ordinance requires the Railroad Companies to lay their tracks and operate their cars.

It remains to consider the space left between the tracks and the water's edge of the Canal and the evidence as to the amount
171 of space needed by the Canal Company.

1. Between Hagan Avenue and Broad Street. On the river side of Hagan Avenue the distance from the track to the water's edge is 16.5 feet. This distance increases gradually towards Broad Street, and a few feet before reaching Broad Street is about 34 feet.

It seems to me that as this stretch of the Canal bank is not now used and has never been used for loading or unloading vessels (except the staves mentioned in Ferrer's deposition) the construction of the tracks cannot possibly injure the Canal Company. Besides, I do not see how this stretch of bank will be made more difficult of access than it is now, with the open and unbridged drainage canal between the Canal and the street parallel to the Canal.

2. Between Broad Street and Claiborne Avenue. There are only

four users of the Canal Bank between Broad and Claiborne and none of these have complained. The absence of complaint from them seems to indicate that they do not apprehend injury from the interposition of the railroad tracks between their establishments and the Canal. Nor does there seem to be any ground for such apprehension. The average width of the strip between the tracks and the Canal from Broad Street to Claiborne Avenue is between 40 and 45 feet. Considering the exceedingly small amount of the traffic on this reach of the bank, the space between the Canal and the tracks would seem sufficient.

3. From Claiborne Avenue to the Basin. The width of the strip between the tracks and the Canal for the first three squares from Claiborne towards the Basin is about 50 feet. The tracks then curve in towards the Canal, and the strip is gradually narrowed to about 20 feet in the next two squares; then the tracks curve out and leave a corner and then cut into a corner of the Basin. This corner is to be expropriated. Mr. Dufour, counsel of the Canal Company, has advised that the Canal Company cannot, without the consent of all the shareholders, convey to the Railroad Com-
 172 pany any part of the Canal property. In my opinion all the shareholders could not, even by unanimous consent, convey to any one any part of the Canal or Basin. The ownership of this property is in the State and the Canal Company's rights over it are simply in the nature of a lease.

The measurements above given apparently indicate a sufficient strip between the tracks and the Canal for the business of the latter. I do not think the affidavits of the complainants warrant the issuance of a preliminary injunction on the supposition that the construction of the tracks will materially interfere with the business of the Canal. I do not think I am warranted by the depositions in concluding that there will be any serious interference.

The defendants have laid down a temporary construction track from Hagan Avenue to Claiborne Avenue. It does not appear that this track interferes with the existing traffic of the Canal, although for several squares in from Hagan Avenue it is built within 60 feet of the water's edge and even cuts the bottom part of the levee. See Map of De Armas.

The complainants strenuously insist that the affidavits of Messrs. De Armas, McConnell, Pratt, Moore, Beach, Westfeldt, Booth and Murphy show that the construction of the railroad tracks will do great injury to the Canal Company's business.

1. George De Armas, Surveyor.

This affidavit relates only to the Canal bank from Hagan Avenue to Derbigny Street, and to what Mr. De Armas thinks will be the effect of the temporary construction track. Mr. De Armas does not assert that he knows the intended lines of the permanent tracks, and expresses no opinion as to effect of the permanent tracks. Much the larger part of the space over which the temporary track extends has never been used at all by the Canal Company, and no one

suggests that the temporary track does actually now in-
 173 commodate a single shipper.

2. James McConnell, Jr.

Says that he was for several years attorney of the Carondelet Canal & Navigation Company and critically examined its charters and concluded and reported "that the Company had exclusive control of the banks in question" (along the Canal) "and was possessed of the valuable and exclusive right of controlling and operating a railroad on either bank * * *."

Mr. McConnell further testifies that the construction and operation of the construction tracks shown on the plan of De Armas "will destroy any value which the said bank has or may have" for loading and unloading vessels.

I have already found that the Company has no control over nor property in the streets paralleling the Canal, and has no exclusive privilege to build a railroad in those streets, that it never had a valuable privilege; and that its privilege, whether valuable or worthless, is probably forfeited for nonuse.

The laying of the construction track along a reach of the Canal which has never been used, for the greater part, entails no present injury on the Canal Company, and would not, in my opinion, justify an injunction.

3. Dr. George K. Pratt.

Dr. Pratt's affidavit seems to me largely irrelevant to the issues in this case. The Doctor deposes that, in his opinion the right to build a railroad line into the city along the Canal, would be worth \$250,000.00 to any great system of railways. This right might be worth all of that sum or more to the railroad system, but if the Canal Company has not, as the bill herein declares it has not, authority or power to sell such right of entry, I do not see what bearing its value has on this litigation. I have found that the city has the control of the streets in which the tracks are to be laid, and the question of the value of the right of entry is, therefore, one between the city and the railway system. The Canal Company
174 can protest only against such use of the streets as would materially injure the Canal traffic.

The Doctor's statement that the switch connecting privilege is worth \$100,000.00 to the Railroad Companies is not borne out by other evidence in the record. The uncontradicted statement of Mr. Berg is that railroad companies never pay for switch connections. The evidence shows that the New Basin Canal Company has granted a similar privilege gratuitously, and that the National Contracting Company had such a connecting switch in 1898 and 1899, which largely increased the business of the Canal Company.

4. Dr. P. A. Moore.

Dr. Moore's affidavit is about the same, so far as it goes, as Dr. Pratt's.

5. H. U. Beach.

Refers to the temporary construction track.

5. G. R. Westfeldt.

Refers to the temporary construction track and to the use of the bank for piling and storing lumber, sand, building materials or

merchandise. I find nothing in the charter of the Company authorizing it to use the banks for storage purposes.

6. G. W. Booth.

Deposes as to the switch and temporary construction track.

7. Walter C. Murphy. Superintendent of the New Basin Canal.

This affidavit seems to refer first of all to the use of the streets along the Canal as a place for storing freight. Mr. Murphy says: "That part of the road so occupied by the railroad would be totally destroyed for uses as a thoroughfare, and if the tracks of said railroad were placed in near proximity to the said Canal, said road would be totally destroyed as a place for storing, landing or handling the freights of the Canal Company."

175 I have only to repeat that the Canal Company has shown no authority to use the streets as a place for storing freight, and I do not think it would be permitted to block or obstruct them in that manner.

This opinion has extended to such a length that it will probably serve the convenience of all parties to restate the findings, in connection with the allegations of the petition.

Synopsis of Findings.

1. The complainant is a shareholder of the Carondelet Canal & Navigation Company.

2. The several natural persons named as defendants in the bill are the officers and Directors of that Company.

3. The capital stock of the Canal Company is, apparently, composed of 2140 shares. On December 31st, 1902, Mr. L. S. Berg purchased from Dr. George K. Pratt, for \$75,000.00 cash, 1183 shares, being a majority of the stock of said Company.

This stock still stands in the name of L. S. Berg, or B. F. Yoakum, but the money to purchase it with was furnished by B. F. Yoakum, then President of the St. Louis & San Francisco Railroad Company, and Mr. Berg swears that he believes that "the equitable interest" in said stock is in the St. Louis & San Francisco Railroad Company, and I therefore find that said Company is the real owner of said stock.

Shares of this stock thus purchased from Dr. Pratt were put in the names of George L'Hote, Ivy T. Preston, L. S. Berg, W. C. Dufour, J. V. Roca, James Demoruelle, Victor Demoruelle, and William Demoruelle, who with Fritz Jahneke, compose the Board of Directors of said Canal Company, but the said stock really belongs to said St. Louis & San Francisco Railroad Company.

Mr. L. S. Berg is the President of the New Orleans Terminal Company, which is owned by the St. Louis & San Francisco Railroad Company and by the Southern Railway Company.

Mr. Ivy T. Preston is the Commercial Agent in New Orleans of the St. Louis & San Francisco Railroad Company.

Mr. George L'Hote is owner of a large lumber factory on the Old

Basin. He assisted the Terminal Company in acquiring property in that vicinity.

Mr. W. C. Dufour is an attorney, and is now the attorney of the Canal Company.

Mr. James Demoruelle is engaged in the brick business on the Old Basin.

Mr. Victor Demoruelle and Mr. William Demoruelle are his sons.

Mr. J. V. Roca is engaged in business on the banks of the Canal.

All the persons above named are nominees of the owner of the majority of the stock, and were qualified and elected by that owner.

Mr. Fritz Jahneke owns stock in the Canal Company in his own right and does business on the Canal.

4. The St. Louis & San Francisco Railroad Company and the Southern Railway Company own the New Orleans Terminal Company, and the City of New Orleans, under Ordinance 1615, N. C. S., granted the last named Company a right of entrance into the city through Toulouse Street or Carondelet Walk, the street adjacent and parallel to the Canal on the south side.

5. I find, and the defendants all admit, that, when the Railroad Companies had purchased the majority of the stock of the Canal Company and had then elected a Board of Directors, consisting of such persons as they saw fit to nominate and elect, the Board
177 of Directors so elected owed it to the minority to act with scrupulous care to assert all the rights of the Canal Company as against the Railroad Company in respect to the streets in which both companies had or asserted they had rights. And the action of the board in respect of such possibly conflicting rights must be closely scrutinized. But this duty of the board did not render it obligatory upon said board to assert rights which the minority believed the Canal Company had, but which that Company did not in fact have.

The test of the good faith and diligence of the board in discharge of its duties is furnished by the charter and not by the beliefs of the minority. And the board would not have been justified in engaging in litigation to assert rights for the Canal Company which it was not really entitled to.

The board would also make usual and fair arrangements between the two companies for the interchange of traffic in the customary manner.

6. The Carondelet Canal & Navigation Company does not own, and has no right of control over the streets which adjoin and run parallel to the Canal.

7. The Charter of the said Canal Company expires on March 10th, 1908.

8. Under its charter provisions, the only rights granted to the Canal Company with respect to the streets adjoining and parallel to the Canal were

(1) To take ground therein for layouts, half moons and basins, when needed for the commerce of the Canal.

(2) To build a railroad therein.

The evidence establishes that the traffic of the Canal has
178 so decreased that no dividends have been paid for the past
four years, and the volume of business is less than half
of what it was twelve years ago.

I therefore find that no need for any additional space for layouts,
basins, or half moons is shown, and there is no reason to anticipate
such need.

The railroad franchise is so hedged in with limitations that it was
never of much value, but as it has not been availed of for 46 years
and is not alienable, and less than four years yet remain to the
Company, I think it would probably be held to have lapsed.

The complainants do not aver that the Canal Company needs
land for additional layouts, half moons and basins, or will probably
ever need any, and the evidence negatives any such need. Neither
do the complainants aver ability or intention on the part of the
Canal Company, to build any railroad.

I, therefore, find that these charter provisions do not justify the
conclusion that any rights of the Canal Company with respect to
said street would be violated by the construction of the railroads.

I find that the city has the right to authorize the use of said
street for railroad tracks, provided the reasonable right of access to
the Canal is reserved.

9. I find that the reasonable right of access to the banks of the
Canal will not be destroyed or unduly impeded by the tracks of
the defendant Railroad Companies, when constructed as required
by the city ordinance.

10. I find that the switch arrangement for interchange of traffic
between the Canal Company and the Railroad Companies is not
unreasonable or objectionable, but is a proper exercise of the dis-
cretion exercised in the board of directors.

179 11. I find that the temporary construction track com-
plained of is laid along a part of the Canal bank which never
has been and is not now used for commerce of the Canal, except,
perhaps, to a very small extent, and there is no proof that as laid it
actually interferes with the present operations of the Canal.

12. I find that there is no reason to believe that the construction
of the railroad tracks in the street will embarrass the settlement of
the Canal Company with the State when the charter of the Canal
Company expires in 1908.

13. I find that the charge that the Board of Directors contrived
and intended to sacrifice valuable rights of the Canal Company to
the Railroad Companies is not proven. The Directors have sworn
that they acted in good faith and I have no doubt that they did.
The charge is based principally on the supposition, positively averred
as a fact in the bills, that the Canal Company owned the streets along
the Canal or had valuable and exclusive rights therein. I think
the Directors have taken the correct view of the nature and extent
of the rights of the Canal Company and that the Canal Company
would have gained nothing and will now gain nothing by asserting
that it had such rights as the bills herein aver it has.

14. I find that there is no ground for issuing a preliminary injunction, which would embarrass and delay the completion of a work of great public utility and which is not necessary to protect any apparent rights of the Canal Company. Nor do I see any reason to appoint a receiver, convinced as I am that the Board of Directors of the Canal Company are acting in good faith, and are capable and honest.

180 I may add that conclusions based on ex parte affidavits, where neither side has had the opportunity to cross-examine the witnesses of the other side, are necessarily unsatisfactory and provisional. While I am firmly convinced that a case has not been made out on the affidavits in the record which entitles the complainants to the preliminary injunction and appointment of a receiver for which they ask, yet it may be that after a full trial they may be able to make out a case for some relief in the final judgment. This, however, I very much doubt, as the rights asserted depend principally on the construction of the legislative charter of the Company.

I therefore do not advise the issuance of a preliminary injunction nor the appointment of a receiver as prayed for in the bill herein.

New Orleans, July 13th, '04.

Respectfully submitted,

(Signed)

E. D. SAUNDERS,
Special Master.

Clerk's Office.

I, Henry J. Carter, Clerk of the Circuit Court of the United States for the Eastern District of Louisiana, do hereby certify the foregoing Forty-six and one-half (46½) pages do contain a true extract from the report of E. D. Saunders, Esquire, filed July 13, 1904, in the case of George G. Wheeler et al., vs. St. Louis & San Francisco Railroad Company, et al., No. 13,244 of the Docket of said Court.

Witness, my hand and seal of said Court, at the City of New Orleans, Louisiana, this — day of February, A. D. 1910.

[SEAL.] (Signed)

H. J. CARTER, *Clerk.*

(Endorsed:) No. 89,798—Civil District Court. Filed March 21st, 1910—(Signed) Joe Garidel, D'y Cl'k.—No. 13,244 U. S. Circuit Court, Eastern District of Louisiana, New Orleans Division. George G. Wheelock et al. vs. St. Louis & San Francisco Railroad Company et al. Copy of Extract from Report of E. D. Saunders, Esq., Special Master.

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Opinion and Decree.

Filed March 21st, 1910.

Civil District Court, Parish of Orleans, Div. "C."

No. 89798.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION COMPANY.

Reasons for Judgment.

The record herein contains a very elaborate history of the property to be effected in this suit. It is contained in the report of the Honorable E. D. Saunders, Special Master, in a matter lately pending in one of the United States Courts of this city. There is likewise a number of notarial acts, documents, judicial opinions and certain acts of Congress showing title to the property in suit. The Court refers to these offerings simply as a matter of history, without attempting to determine, the questions which might arise from their consideration, if now involved.

It appears that the Territorial Legislature of Louisiana after the cession from France, found itself in possession of the property then known as the Carondelet Canal, Basin and Bayou St. John then also used as a public highway. The Basin was then of small dimensions, the canal narrow and shallow, the Bayou St. John scarcely navigable from neglect or natural causes.

In 1805, the Legislative Council granted a charter to a company named, "The Orleans Navigation Company," and granted to it the use of the property known as above. This corporation was organized for the general purpose of promoting navigation throughout the Territory, but was later restricted in its work to the improvement of the property then and now known as the Carondelet Canal, Basin and Bayou St. John property. That company was involved in considerable litigation, including an unsuccessful attempt to forfeit its charter; but in 1852, in accordance with a previous act of the Legislature of the State, directing proper proceedings, its charter was declared forfeited in the following terms: "It is ordered, adjudged and decreed, that the corporation of the Orleans Navigation Company has forfeited its charter; that it be dissolved, and henceforth extinct, for the violation of the conditions of the act of incorporation." 7 Ann. 682. Among other reasons for the judgment the court says, 7 Ann. 680: "All its property, except its rights upon the basin, canal and Bayou St. John, has been sold." No other reference is made to the property of the Orleans Navigation Company.

On the 28th of June, 1852, by act before R. Brennan, then Notary Public, Jacob S. Halsey, who had been legally appointed liquidating

commissioner of the company, sold all of its property to one James Currie. This sale was made for the sum of \$69,000, one-tenth payable, in cash, and twenty several bonds each for \$3,105, payable one to twenty years after date of the 24th instant (June 1852).

This sale was made subject to the following condition: Section 4, of Act 309 of 1852:

SEC. 4. That it shall be a condition of said sale, that if the purchasers shall organize themselves into a corporation, under the laws of this State, for a term of twenty five years, for the purpose of carrying out and effecting all the improvements situated and described in the reports and plans, known as "Harrison's Reports and Plans," including the construction of a new basin at the junction of Canal Carondelet and Bayou St. John, of the depth and dimension set forth in said reports, and should actually complete and effect all said improvements within the term of three years from the date of this charter, then the said corporation shall be entitled to receive and exact all such tolls and revenues from the use of said canal, bayou and road, as the Orleans Navigation Company was entitled to receive under its charter, Provided that at the end of said term of twenty-five years the State of Louisiana shall have the option either of granting to said corporation a renewal of the right of receiving said tolls for a second term of twenty-five years, or of purchasing for itself the property and improvements of the company at the appraised value thereof, and, provided, further, that if said
183 second term of twenty five years be granted, the whole property shall revert to the State of Louisiana at the end of said
second term without any payment or compensation made to said company."

In October, 1852, James Currie and others organized a corporation under the name of the "New Orleans Canal and Navigation Company," which took over the property, by act before R. Brennan, same property, same payment and subject to same condition of reversion to the State, which Currie had acquired as the effect of the sale before Brennan, Notary. This corporation likewise exercised certain franchises granted by Act 309 of 1852, but not so extensive or beneficial as those exercised by its predecessor, the Orleans Navigation Company.

The affairs of the new company did not prosper, and it failed to comply with the terms of the act under which it was incorporated, and in anticipation of the forfeiture of its charter the Legislature adopted Act 160 of 1857, approved March 16th, 1857.

By this act certain persons were formed into a corporation known as "Carondelet Canal & Navigation Company," and they were authorized to take over the property of the New Orleans Canal & Navigation Company; to adjust its liabilities, and was vested with all the franchises of the original company, the Orleans Navigation Company. This act is somewhat lengthy, and among other provisions contains the provisions stipulating the reversion of the property of the company to the State, as follows: Act 160 of 1850, Sec. 20:

"That this corporation shall have existence from and during the

term of twenty-five years from and after the 17th day of October next (1857); provided that the State of Louisiana shall have the right to take possession of said Canal Carondelet and Bayou St. John and all the property and improvements connected therewith, at the expiration of the term above mentioned, should the Legislature determine so to do, upon paying to this corporation the value of said property to be appraised by five competent persons, as experts, two to be appointed by the corporation and two by the Governor, and the four thus appointed shall appoint a fifth; said experts shall be required to take an oath to discharge their duty faithfully.

184 In the event that the State shall not determine to take possession of said property, as herein provided, then this corporation shall be in existence for twenty-five years from and after the expiration of the term of this section mentioned aforesaid, and at the end of such second term of twenty-five years, this property may still become absolutely the property of the State of Louisiana, and no compensation required to be made to this corporation."

The last legislation on this subject is Act 74 of 1858, entitled, "An Act relative to the Carondelet Canal and Navigation Company of New Orleans," Approved March 10th, 1858.

This act has no repealing clause, but the Supreme Court held, 37 Ann. 102, Navigation Co. vs. Tedesco, that one of its effects was, "that the said company shall enjoy corporate succession during fifty years from this date, after which time it may revert to the State, etc.", and the question of the effect of the act upon the reversion to the State was intentionally avoided.

Besides extending the charter of this company fifty years from March 10th, 1858, the act exempted its property from taxation, prohibited city drainage into the canal, gave it the exclusive right to towing, authorized it to construct lay-out, basins, half moons, etc., and to build a railroad, etc., and changing the remedy from a board of five appraisers as provided in Act 160 of 1857, to three appraisers as provided by Sec. 4 of act 74 of 1858, and likewise contained the provision, the construction of which is the matter at issue herein, as follows:

Act 74 of 1858, section 4:

"That the said company shall enjoy corporate succession during fifty years from this date; after which time it may revert to the State, upon due compensation being made according to award by three commissioners, one appointed by the Governor of the State, one by the company and the third by any Court of Record of New Orleans."

This being the situation and the law, the State in its petition claims the reversion and possession without compensation of the entire property of the defunct corporation, now in the hands
185 of its liquidators, as well as of the \$3,000 deposited in bank in this city to await the final determination of this issue.

1. By virtue of section 20 of Act 160 of 1852, as the effect of the contract in said act, and particularly of that provision stipulating that the property should revert to the State without compensation at the expiration of fifty years.

2. Because the defendant company has in two cases in the courts of this parish, alleged that it held its property as lessee, and is hence estopped from claiming ownership and compensation, and is further estopped by the same allegations from contesting the right of the lessor, presumably the State, to possession and relegating the issue of compensation for improvements as between lessor and lessee to be determined after delivery of the property leased.

3. Because section 4 of Act 74 of 1858 is in violation of Act 109 of the Constitution of 1852.

4. And, finally, that if the defendant is not estopped by its pleadings, and if section 4 of Act 74 of 1858 is not unconstitutional, then Act 74 of 1858 and Act 160 of 1852, being acts in *pari materia*, must be construed together, and both be given effect, and, consequently, that under section 20 of Act 160 of 1857, the State, the fifty years having elapsed, is entitled to the reversion without compensation, of all the property of the defendant acquired prior to the passage of Act 74 of 1858, and that the defendant would be entitled to compensation but only insofar as it concerned the property acquired subsequent to the passage of Act 74 of 1857.

The respondent answers, admitting that the State is entitled to take over all the property of the Carondelet Canal and Navigation Company; but insists that under section 4 of Act 74 of 1858 is must be compensated for the entire property, presently owned and in possession of its liquidators, including the deposit of \$3000 in bank in this city. The respondent likewise claims that it is entitled to possession until this compensation is paid at or before
186 the act of reversion takes place. And that the State, like an individual, is estopped to plead the unconstitutionality of Act 74 of 1858.

To clear up the situation, it is proper to consider the several accessory questions involved.

The respondent has in several cases made the assertion, more or less definite, that it was the lessee of the property in question. These allegations were made in tax suits involving the exemption from taxation given by Act 74 of 1858.

They were erroneous assumptions of counsel, and not essential in the pleadings.

Estopped by pleading was settled by the Supreme Court in *Lackman & Jacobi vs. Block Brothers*, 47 Ann. 516. "Finally on this branch of the case, it is pressed on us, the allegations in the attachment suit are judicial confessions within the purview of Art. 2291 of the Civil Code. This, in our view, misconceives the judicial confession the subject of that article. It can be invoked as conclusive by the party to the suit in which the allegation is made, and, even as to him may be revoked for error of fact. As to those not parties in the suit, the allegations are evidence in their favor, but open to explanation and correction by proof. (Quoting authorities.) Of course when any admission or declaration of a party has been acted on by another it can not be withdrawn to his prejudice. Then the admission becomes an estoppel."

This is a correct construction of the doctrine of estoppel and the plea cannot benefit the State. The allegation of tenancy was

erroneous, and could be explained by proof; certainly the State never took any different position from that now assumed by it by reason of the allegation of tenancy. It has neither been misled or been endangered by these allegations, nor has any of its rights been affected by its pleadings.

Therefore, the doctrine of estoppel does not apply and the point is disallowed.

187 The State further pleads the unconstitutionality of section

4 of Act 74 of 1858, and that if the phrase, "after which term it may revert to the State, upon due compensation being made according to award by three commissioners, one appointed by the Governor of the State, one by the company, and the third by any Court of Record of New Orleans," be construed to mean that all the property of the Carondelet Canal and Navigation Company previously acquired, should be the object of compensation in the award, that such construction would be the giving of aid in violation of Art. 109 of the Constitution of 1852, and therefore void.

Had the Legislature clearly and positively repealed or declared the phrase in question to be retroactive, or declared that its intent was to cancel the right of the State to reversion without compensation at the end of the fifty years as provided in section 20 of Act 160 of 1857, still the phrase would not be the giving of aid which was prohibited by Art. 109 of the Constitution. That article means the giving of money or the loan of the credit of the State, which it prohibits or regulates as set forth in the article, and does not prohibit the granting of exemption from taxes, which is an indirect aid, nor the increase of the franchise rights of the corporation, which is another kind of aid, nor the extension of charter, which is also aid of a certain quality. The Court therefore feels that the section is not violative of Art. 109 of the Constitution of 1852.

The basis of defendant's claim is section 4 of Act 74: "That the said company shall enjoy corporate succession during fifty years from this date; after which time it may revert to the State upon due compensation being made according to award."

This clause is so loosely drawn that it is impossible to say what its meaning is. The word "it" is very indefinite. "It" may refer to the "corporate succession"; but the respondent claims that "it" refers to and includes all the property and rights owned or held by the corporation whose charter had, by the preceding words of the section, been extended from October 17th, 1907, to March 10th, 1908.

188 To give the word "it" that meaning would require a violent stretch of the imagination. The title of Act 74 of 1858, conveyed no intimation either to the public or the legislature, that its purpose was to amend or repeal the contract rights of the State as contained in Section 20 of Act 160 of 1857 (the right to reversion without compensation at the end of fifty years), nor does it pretend to be retroactive and amend or abrogate that right.

It certainly would not be reasonable to construe the words of a statute, thus awkwardly drawn, so that the effect would be to disturb the vested rights of the State in the original contract and thus make it violative of the provisions of the State and Federal

constitutions prohibiting any legislation impairing the obligations of a contract.

To hold Act 74 of 1858 constitutional relieves the Court of the necessity of passing upon defendant's estoppel.

The Court will therefore hold that both of the sections in question are legal and enforceable, and considering it its duty in the construction of laws in *pari materia*, to make them both effective, if possible, it will further hold (but only for the purpose of deciding this question) that the State is entitled to take over without compensation such property as was held and owned by the defendant company up to March 10th, 1858, and that for the property, etc., acquired and improvements subsequent to the passage of Act 74 of 1858, the Carondelet Canal & Navigation Company is entitled to compensation according to award of the three commissioners provided for in that act.

That the law further provides that the reversion may take place "upon due compensation being made," which means that the compensation mentioned must be made before the delivery of the property.

The court is unable in the present case to determine what will revert to the State under this conclusion of the law, or what the State will be compelled to make compensation for. Besides, these two kinds of property may be so intermingled, that even the 189 commissioners charged with fixing the award may find it difficult to adjust the difficulties presented.

In the meantime the liquidators, by reason of their right to retain the property liable to reversion until compensation is made, will find themselves confronted by the same difficulty, and cannot be made to determine that which it is the duty of the three commissioners to determine by their award.

In conclusion the Court finds itself unable to render any judgment except to hold that the three commissioners provided for by section 4 of Act 74 of 1858, must be appointed before further proceedings can be had, and, except to that extent this proceeding is dismissed as premature, without prejudice to the right of either party to question the report and award of the commissioners, by any legal process, when the award shall have been made.

Judgment accordingly.

Judgment.

Civil District Court, Division "C."

No. 89798.

STATE OF LOUISIANA

vs.

CARONDELET CANAL AND NAVIGATION Co.

Judgment.

In this case submitted for adjudication, the Court considering the law and the evidence adduced in open Court and for the reasons assigned in the written opinion this day filed,

It is ordered, adjudged and decreed that there be judgment creeing and holding that the three commissioners provided for section 4 of Act 74, of 1858, must be appointed before further proceedings can be had in this case; and with this exception, the action of the State of Louisiana is dismissed as premature, without prejudice to the rights of either party to question the report and award of the said commissioners by any process, when the same shall have been made.

190 Judgment read and rendered in open Court March 21st, 1910.

Judgment signed in open Court March 28th, 1910.

(Signed)

E. K. SKINNER, Judge.

Motion for New Trial.

No. 89798.

Civil District Court, Parish of Orleans, Div. C.

Filed March 28th, 1910, and Entered on Minutes Same Date.

STATE OF LOUISIANA

vs.

CARONDELET CANAL AND NAVIGATION Co. et als.

On motion of the State of Louisiana, through its Attorney General, Walter Guion, and on suggesting to the Court, that the judgment herein rendered on the 21st March, 1910 is contrary to the law and the evidence;

It is ordered that the defendants show cause, on such a day as the court may fix, why said judgment should not be set aside and a new trial granted to the State of Louisiana.

Motion for New Trial Refused.

Extract from the Minutes of Division "C," Monday, March 28th, 1910.

Present: The Honorable E. K. Skinner, Judge.

No. 89798.

STATE OF LOUISIANA

vs.

NEW ORLEANS CARONDELET CANAL AND NAVIGATION Co. et als.

And the above rule having been submitted and for the reasons orally assigned, the Court being of opinion that the judgment

herein should remain undisturbed: It is ordered that said rule be discharged and the application of the State of Louisiana for a new trial is refused at its cost.

191 And, according, the judgment herein rendered and read on the 21st day of March 1910 was signed in open Court on this day.

Motion and Order of Appeal.

Filed March 28th, 1910, and Entered on Minutes Same Date.

No. 89798.

Civil District Court, Division "C."

STATE OF LOUISIANA

vs.

CARONDELET CANAL NAVIGATION COMPANY, A. J. DAVIDSON, J. H. ELLIOT and HANS WIDMER, Liquidators.

On motion of the State of Louisiana, plaintiff, appearing herein through her Attorney General, Walter Guion, and on suggesting and showing to the Court that the judgment rendered by it on the 21st day of March 1910, and read and signed by it, in open Court, on the 28th day of March 1910, is contrary to the law and the evidence, and that plaintiff, the State of Louisiana, is aggrieved and will be injured by said judgment and, for that reason desires a suspensive and a devolutive appeal therefrom returnable, according to law, to the Supreme Court of the State of Louisiana.

It is, therefore, ordered that a suspensive and a devolutive appeal be, and the same are hereby granted to plaintiff, the State of Louisiana, from said judgment returnable to and in the Supreme Court of the State of Louisiana on the 15th day of April 1910 and without bond.

192 *Transcript of Record, Entitled "Carondelet Canal and Navigation Co. vs. P. L. Bouny, Tax Collector, &c.," No. 8122, Civil District Court, Parish of Orleans, Offered in Evidence by Counsel for Defendants. D. 9.*

No. 8122.

Civil District Court, Division "A."

CARONDELET CANAL AND NAVIGATION CO.

vs.

P. L. BOUNY, Tax Collector, &c.

To the Honorable the Judges of the Civil District Court for the Parish of Orleans:

The petition of the Carondelet Canal & Navigation Company, a corporation duly created by the laws of the State of Louisiana and domiciled in the City of New Orleans, humbly shows:

That the said company has been notified by P. L. Bouny, State Tax Collector, Lower District, Parish of Orleans, that he will proceed to advertise and sell the movable property assessed, viz: "the stocks" of the company to satisfy the amount of alleged assessments for the taxes of the years 1881 and 1882, said assessment being based on the assessed value of the stocks, and said taxes amounting to four hundred and forty 30/100 Dollars, as will more fully appear by the said notices marked A & B, hereunto annexed and made part hereof.

Your petitioner avers that it is in no way liable or indebted for said taxes. That the Carondelet Canal and Navigation Company was incorporated by the act of the Legislature No. 160 in the year 1857. That said act imposed obligations which the Company could not fulfill and especially within the time prescribed, and to enable to continue, its charter was amended by act No. 74 of the Legislature of 1858. That by said act your petitioner was exempted from taxation during the period of fifty years. In consideration thereof your petitioner has ever since continued and has complied with the terms and conditions of said Acts.

193 Petitioner further shows that the exemption of the property of the corporation extends to the "stock" in the hands of its stockholders, the stock represents and is the title of the property of the corporation.

Your petitioner avers that an injunction is necessary to prevent said Bouny, Tax Collector &c., from advertising and selling; and, in consideration of the annexed affidavit and on furnishing bond for such sum as this Honorable Court may determine, your petitioner is entitled to said writ.

Wherefore petitioner prays for an order of this Honorable Court directing a writ of injunction do issue on plaintiff giving bond and security, according to law, and for such amount as this Court may determine, that P. L. Bouny, State Tax Collector, Lower District, Parish of Orleans, be empowered from advertising and selling the stocks of the Carondelet Canal and Navigation Company, that the said Bouny, Tax Collector &c., be cited and after due proceedings had, the property and the stocks of said company be declared to be exempt from taxation, that the injunction be made perpetual and petitioner prays for all other and further relief as the nature of the case may require of,

As in duty bound.

(Signed)

H. D. OGDEN, *Attorney.*

Bernard Saloy being duly sworn deposes and says: that he is the President of the Carondelet Canal and Navigation Company, the plaintiff, that the facts stated in the foregoing petition are true and according to his belief render an injunction necessary.

(Signed)

B. SALOY, *Presdt.*

Sworn to and subscribed before me, March 16, 1883.

(Signed)

[SEAL.]

E. A. LUMINAIS,
Deputy Clerk.

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Order.

Let a writ of injunction issue as herein prayed for and according to law upon petitioner's giving bond with good and solvent security in the sum of one thousand dollars, conditioned as the law directs.

New Orleans, March 17th, 1883.

(Signed)

A. L. TISSOT, *Judge.*

Bond of Injunction.

Filed March 16th, 1910.

Know all men by these presents, That we Carondelet Canal and Navigation Co. as principal and Antoine Carriere as security, of the City of New Orleans and State of Louisiana, are held and firmly bound unto P. L. Bouny State Tax Collector, Lower District, Parish of Orleans, in the sum of One thousand dollars lawful money of the United States of America, to be paid to said P. L. Bouny, State Tax Collector, Lower District, Parish of Orleans, his heirs executors, administrators and assigns, for which payment well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents.

Sealed with our seals, and dated the 16th day of March in the year of our Lord 1883.

Whereas, the said Carondelet Canal and Navigation Company has this day presented a petition to the Honorable the Civil District Court for the Parish of Orleans, praying for a writ of injunction.

Now, the condition of the above obligation is, That we, the above bound Carondelet Canal and Navigation Co. and — will well and truly pay to the said P. L. Bouny, State Tax Collector, Lower District, Parish of Orleans, the defendant in said injunction all such damages as he may recover against us in case it should be decided that the injunction was wrongfully obtained.

(Sg.)

B. SALOY, *Presd't.* [SEAL.]

ANT. CARRIERE. [SEAL.]

Signed, sealed and delivered in presence of—

(Signed) H. D. OGDEN.

195 *Tax Notice, Annexed to and Made Part of Foregoing Petition.*

Filed March 16th, 1883.

Office State Tax Collector, Lower District, Parish of Orleans.

Nos. 112 & 114 Royal Street.

NEW ORLEANS, *March 1st*, 1883.

To the Carondelet Canal & Navigation Co., Toulouse & Villere Streets.

SIR: You are hereby officially notified, in conformity with the provisions of Act No. 77, of 1880, that the State taxes assessed to

you on movable property in this parish, which amount to the sum of Two hundred and seven 50/100 Dollars, Tax of 1881 (the aggregate assessed value of such property being Stocks \$34,582 fell due and should have been paid in full on or before the first day of the current month; that you became a delinquent for said taxes on such first day of January, 1882; that after the expiration of twenty days from the date of this notice, I, as Tax Collector of the Lower District of the Parish of Orleans, will advertise for sale the movable property on which the said taxes are due, in the manner provided by law for judicial sales; that at the principal front door of the courthouse where the Civil District Court of this parish is held, I will sell, within the legal hours for judicial sales, for cash, and without appraisement, such portion of the said movable property as you shall point out and deliver to me; and, in case, you shall not point out sufficient property, that I will at once, and without further delay, sell for cash, without appraisement, the least quantity of said movable property, which any bidder will buy for the amount of taxes assessed upon movable property, with interest and costs.

Respectfully yours,

P. L. BOUNY,
State Tax Collector, Lower District, Parish of Orleans.

196 *Tax Notice, Annexed to and Made Part of Foregoing Petition.*

Filed March 16th, 1883.

Office State Tax Collector, Lower District, Parish of Orleans.

Nos. 112 & 114 Royal Street.

NEW ORLEANS, *March 1st, 1883.*

To Carondelet Canal Navigation Co., ———Street.

SIR: You are hereby officially notified, in conformity with the provisions of Act No. 96 of 1882, that the State taxes assessed to you on movable property in this parish, which amount to the sum of Two hundred & thirty-two Dollars and 80/100 (the aggregate assessed value of such property being \$38,798 and 20/100 Stocks) fell due and should have been paid in full on or before the first day of October, 1882; that you became a delinquent for said taxes on the said day; that after the expiration of twenty days from the date of this notice, I, as Tax Collector of the Lower District of the Parish of Orleans, will advertise for sale the movable property on which the said taxes are due, in the manner provided by law for judicial sales; that at the principal front door of the courthouse where the Civil District Court of said parish is held, I will sell within the legal hours for judicial sales, for cash, and without appraisement, such portion of the said movable property as you shall point out and deliver to me; and, in case you shall not point out sufficient

property, that I will at once, and without further delay, sell for cash, without appraisement, the least quantity of said movable property, which any bidder will buy for the amount of taxes assessed upon movable property, with interest and costs. Interest on the above from January 1st, 1883; will be at the rate of 3 per cent a month.

Respectfully yours,

P. L. BOUNY,

State Tax Collector, Lower District, Parish of Orleans.

197 *Writ of Injunction and Sheriff's Return Thereon.*

Filed March 21st, 1883.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

No. 8122.

CARONDELET CANAL AND NAVIGATION COMPANY,

vs.

P. L. BOUNY, Tax Collector.

The State of Louisiana to P. L. Bouny, State Tax Collector, Lower District, Parish of Orleans:

You are hereby commanded, enjoined and restrained, in the name of the State of Louisiana and of the Civil District Court for the Parish of Orleans from either in advertising or selling the Stocks of the Carondelet Canal and Navigation Company, plaintiff herein.

And you are so commanded, enjoined and restrained until the further order of this Court.

Witness the Honorable A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, Judges of our said Court, this 17th day of March, in the year of our Lord one thousand eight hundred and eighty-three, and in the one hundred and seventh year of the Independence of the United States.

(Signed)

GEO. P. CAZELOS,

Deputy Clerk.

Received March 17th, 1883 and on the 19th day of March, 1883, I served a copy of the within writ of injunction personally on P. L. Bouny, Tax Collector &c., defendant herein.

(Signed)

P. A. MCINTYRE,

Deputy Sheriff.

Sheriff's fee's \$2.00.

Returned same day.

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Citation and Sheriff's Return Thereon.

Filed March 21st, 1883.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

No. 8122.

CARONDELET CANAL AND NAVIGATION COMPANY

vs.

P. L. BOUNY, Tax Collector, Lower District.

Mr. P. L. Bouny, State Tax Collector, Lower District, New Orleans, La.:

You hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the Clerk of the Civil District Court for the Parish of Orleans, within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, Judges of the said Court, this 17th day of March, in the year of our Lord 1883.

Court Ho-se—opposite Jackson Square.

(Signed)

GEO. P. CAZELOS,

Deputy Clerk.

Received Mar. 17th, 1883 and on the 19th day of March, 1883, I served a copy of the within citation and accompanying petition personally on P. L. Bouny, Tax Collector, defendant herein.

(Signed)

P. A. MCINTYRE,

Deputy Sheriff.

Returned same day.

Sheriff's fees \$1.50.

Default Entered.

Extract from the Minutes of Division "A," Thursday, April 12th, 1883.

Present: The Honorable A. L. Tissot, Judge.

No. 8122.

CARONDELET CANAL & NAVIGATION Co.

vs.

P. L. BOUNY, Tax Collector.

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On motion of attorney for plaintiff herein and on showing to the Court that defendant, although duly cited has failed to answer; It is ordered that judgment by default be entered against said defendant.

Testimony and Notes of Evidence.

Filed June 27th, 1883.

Civil District Court for the Parish of Orleans, Division "A."

No. 8122.

CARONDELET CANAL & NAVIGATION CO.

vs.

P. L. BOUNY, State Tax Collector, Lower District of N. O.

Testimony Taken in Open Court June 27th, 1883, by H. Messonnier,
Minute Clerk.

LOUIS GAGNET (sworn) by Judge H. D. Ogden.

1. Counsel for plaintiff offers the act entitled Orleans Navigation Co. incorporated by an act for improving the inland navigation of the Territory of Orleans" approved July 3rd, 1805.
2. Act No. 112 of the Legislature of Louisiana of 1850.
3. Act No. 309 of the Legislature of Louisiana of 1852.
4. Judgment of the Supreme Court of Louisiana in the suit of the State of Louisiana vs. The Orleans Navigation Co., reported 7th Ann. p. 679.
5. Sale of rights etc. by Orleans Navigation Co. to James Currie passed before Richard Brennen, notary public, on 28th of June, 1852.
6. Transfer of rights acquired by Currie before Brennan on the 28th of June, 1852 to the New Orleans Canal and Navigation Co. by Act before Brennan, not. pub. on 26th of Oct., 1852.
7. Act No. 160 of the Legislature of Louisiana of 1857 incorporating the Carondelet Canal & Navigation Co.
8. Compromise and transfer of property by the New Orleans Canal and Navigation Co. to the Carondelet Canal and Navigation Co., passed before E. Bouny, not. pub. on 3rd July, 1857.
9. Act No. 74 of the Legislature of Louisiana of 1858. The different acts of the Legislature herein offered are offered from the printed reports of the Acts of the Legislature of the respective years.

200 By Mr. OGDEN :

Q. Mr. Gagnet have you been connected with the New Orleans Canal and Navigation Company and the Carondelet Canal and Navigation Co.?

A. Yes.

Q. In what capacity and since when?

A. As secretary from 1845 to 1857 of the New Orleans Canal & Navigation Company and from 1857 to 1866 as secretary of the Carondelet Canal and Navigation Company; from 1866 to 1878 as lessee of the Carondelet Canal.

Q. Do you know whether any works were made by the Company during the year 1857 and whether any money was paid by the Company on the compromise made with the New Orleans Canal & Navigation Company?

A. From 1857 to 1858, there was \$138,000.00 expended for works of which \$12,000 for obligations of the New Orleans Canal Nav. Co.

Q. Will you please state what was the condition of the Co. at the end of 1857, and whether they intended or could continue the works?

A. The company had expended all their resources—all their money and could not complete their works, without the aid of the Legislature when in 1858 the Legislature came to their aid by passing the act of 1858.

Q. Was it or was it not for the purpose of preventing the Company to abandon their charter that the act of 1858 was passed?

A. Yes; If it had not been passed they would have been compelled to abandon their charter.

Q. After the act of 1858 was passed did the company continue their works in accordance with their charter?

A. Yes, sir; until 1860, when the War broke out and in 1862 when the Federals took possession of the City they took possession of the Canal and all its properties and only returned same in 1864.

Q. Since then, since the company have had possession of the Canal have they done any work and have they paid any of the debts of the Company?

A. Yes, sir; they have done work and expended \$200,000 up to 1883, including \$68,000, paid for bonds of the New Orleans Canal and Navigation Co. assumed by the present company.

Q. If not the Navigation of the Canal beneficial to the State and to the Commerce of the State?

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A. Yes, sir.

Judgment.

Civil District Court for the Parish of Orleans, Div. A.

No. 8122.

CARONDELET CANAL & NAVIGATION CO.

vs.

P. L. BOUNY, Tax Coll'r, etc.

On motion of H. D. Ogden, Esq., and on producing due proof in support of plaintiff's demand, the law and the evidence being in favor of plaintiff.

It is ordered, adjudged and decreed that the default entered herein April 12th, 1883 be now confirmed and made final, and accordingly, that there be judgment in favor of plaintiff The Carondelet Canal and Navigation Company and against the defendant, P. L. Bouny,

State Tax Collector of the Lower District of New Orleans, perpetuating the injunction herein issued March 17th, 1883 and decreeing the property and stocks of said plaintiff Company to be exempt from taxation; costs herein to be paid by the defendant.

Judgment rendered June 27th, 1883.

Judgment signed July 2d, 1883.

(Signed)

A. L. TISSOT, *Judge.*

Sheriff's Return on Copy of Judgment.

Filed August 4th, 1883.

Received August 1st 1883 and on August 2nd 1883, I served a copy of the within copy of judgment, personally on P. L. Bouny, defendant herein.

(Signed)

P. L. McINTYRE,

Deputy Sheriff.

Returned same day.

Sheriff's fees 50¢.

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Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, L. W. Gunther, D'y Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the foregoing One hundred & eighty seven (187) pages do contain a true, correct and complete Transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein State of Louisiana is plaintiff and Carondelet Canal and Navigation Company is defendant, instituted in this Court and now in the records thereof under the No. 89798 of the Docket thereof Division "C" the Hon. E. K. Skinner, Judge; Five (5) Exhibits and Two (2) Maps are forwarded in the original, as filed.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the City of New Orleans, on this First day of April in the year of our Lord, one thousand nine hundred and ten and in the one hundred and thirty fourth year of the Independence of the United States of America.

(Signed)

[SEAL.]

L. W. GUNTHER,

D'y Clerk.

203 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

THE STATE OF LOUISIANA, Plaintiff, Appellant,
versus

THE ORLEANS NAVIGATION COMPANY, Defendant, Appellee.

Appealed from the First Judicial District Court of the State of Louisiana, under the No. 3759, to the Supreme Court of the State of Louisiana, and Bearing the Number 642.

Marureau & Preston, for plaintiff, appellant.
Duncan & Workman, for defendants, Appellees.

Certified Copy of Transcript of Appeal Lodged in the Supreme Court of the State of Louisiana; also Certified Copies of Certain Documents Filed in Connection Therewith in the Same Tribunal.

EXHIBIT "D"-6. No. 89,798. Civil District Court, Parish of Orleans.
Filed 3/9/10. (Signed) Jos. Doyle, D'y Clerk.

204 STATE OF LOUISIANA:

First Judicial District Court.

Be it remembered that on the twenty third day of February in the Year of our Lord one thousand eight hundred and twenty one into the District Court in & for the first Judicial District of the State of Louisiana came Stephen Mazureau, Attorney General of the State of Louisiana prosecuting in the name & by the authority of the State and filed the following petition, to-wit:

To the Honorable Joshua Lewis, Judge of the District Court for the 1st Judicial District of the State of Louisiana:

Stephen Mazureau, Attorney General of the State of Louisiana, prosecuting in the name and by the authority of the State, Represents, that on the 16th day of February in the present year, a resolution was passed by the Senate and House of Representatives and approved by the Governor of said State, in the terms following to-wit: "Whereas doubts are entertained of the Constitutional validity "and obligation of a certain charter granted by the Governor and "Council to the Orleans Navigation Company by an Act bearing "date the 3rd day of July 1805. And whereas numerous complaints of repeated violations of said charter by said company have "from time to time been made by the Good people of Louisiana and "others navigating the waters of Lake Pontchartrain;

"And whereas, highly favored monopolies and exclusive privileges are in their nature adverse to and incompatible with the "Genius and spirit of a free people tending manifestly in their

"oppressive operation to the alienation of the affections of the
 "citizens for their Government.

205 "And whereas, it is expedient and at all times desirable
 "that the people should distinctly understand their rights
 "as well as the nature and interests of corporate institutions existing
 "under the colour of legal authority.

"Be it resolved by the Senate and house of Representatives of the
 "State of Louisiana in General Assembly convened. That the
 "Attorney General of the State be and he is hereby authorized and
 "required forthwith to issue out or cause to be issued out of the
 "first District Court of said State sitting in New Orleans, a Scire
 "facias to ascertain by due and competent authority:

"1st. The constitutional validity of the aforesaid charter and 2nd
 "Whether the same, if constitutional be not forfeited by reason of
 "the non-feasance & Malfeasance the illegal and oppressive actings
 "and doings of said Company.

"And be it further resolved that it shall be the duty of the Attor-
 "ney General to make a full and faithful report to the ensuing
 "Legislature of this State of the manner of his executing the afore-
 "said writ of Scire facias, together with the opinion and decision
 "of the Court thereon.

"And for the assurance of the more certain and proper execution
 "of the object of these resolutions his Excellency the Governor is
 "hereby authorized and requested (should he deem it expedient)
 "to employ an assistant counsel to the said Attorney General in the
 "support and prosecution of the aforesaid writ of Scire facias.

(Signed)

C. DERBIGNY,

Speaker pro temp. of the House of Reps.

N. MERIAM,

Presid't pro temp. of the Senate.

Approved Feb. 16th, 1821.

(Signed) TH'S B. ROBERTSON,

Governor of the State of Louisiana.

206 Wherefore the said Attorney General, acting as aforesaid
 and in obedience to the said resolution gives this Honorable
 Court to understand and be informed that Martin Gordon, Richard
 Relf, David Oliver, John Longpre, David Urquhart, Greenbury
 Dorsey, William C. Wichers, Thomas S. Kennedy, Eligiers Fromen-
 tin, A. Blanc, Abnor L. Duncan, James Workman and others, to the
 said Attorney General unknown residing in New Orleans in the
 District aforesaid styling themselves, the Orleans Navigation Com-
 pany claim to be a body politic and corporate by the name and
 style of the Orleans Navigation Company, under the authority of a
 pretended charter granted by the Governor and Council of the late
 territory of Orleans on the third day of July, 1805, and under the
 authority of which the said Martin Gordon and others levy large
 tolls upon the citizens of said State and other persons navigating the
 waters of the Bayou St. John and canal Carondelet within the Dis-
 trict aforesaid, which said pretended charter, the said Attorney Gen-
 eral, acting as aforesaid, says is wholly unconstitutional and void and

that the said persons above named can devise no privileges and immunities therefrom. And further the said Attorney General acting as aforesaid says that if the said charter be constitutional and valid in itself, Yet the same has become forfeited by reason of the non-feasance and Malfeasance, the illegal and oppressive actings and doings of the said Martin Gordon & others, pretending to be the Orleans Navigation Company as aforesaid.

Wherefore the said Attorney General prays that a Writ of Scire facias issue from this Honorable Court directed to the said Martin Gordon and others above named commanding them to show by what authority they claim to act as a body politick and corporate and that a Decree may be rendered by this Honorable Court that the said pretended charter is null and void or if it should be considered that the same charter was lawfully granted, then that the same may be adjudged and decreed to have become forfeited by reason of
 207 the abuses before mentioned, and that the said Martin Gordon and others, may be perpetually enjoined from interfering with the free navigation of said waters and from collecting tolls upon the same.

MAZUREAU, *Att'y Gen'l.*

Judge's Order.

It is ordered that a Writ of Scire facias, issue as prayed for in the petition.

(Signed)

JOSHUA LEWIS,
 23RD FEBRUARY, 1821.

Acknowledgment of Service on Petition.

I acknowledge the service of the within petition and Writ.

(Signed)

A. L. DUNCAN,
 23RD FEBRUARY, 1821.

Afterwards to-wit on the said twenty third day of February in the year aforesaid at a session of the Court aforesaid holden at the City of New Orleans the following order was entered upon Record to-wit:

No. 3759.

THE STATE OF LOUISIANA

v.

THE ORLEANS NAVIGATION COMPANY.

On motion of A. L. Duncan, Esquire, of Counsel for the defendants, upon suggesting to the Court that Elijah Clark and David B. Morgan are now resident witnesses and that they are about to leave the jurisdiction of this Court. Whereupon ordered by the Court that a Commission issue herein to examine said witnesses in open
 208 Court to-morrow the 24th day of February instant at the hour of one o'clock A. M. due notice thereof being given to the Attorney General of the State of Louisiana.

Sheriff's Return on Order.

Served copy of the within order on E. Mazureau Esquire Att'y.
Gen'l.

February 23rd, 1821.

Returned same day.

(Signed)

J. H. HOLLAND,
D'y Sh'ff.

Afterwards to-wit, on the eleventh day of April, in the year aforesaid into the Court aforesaid came the Defendants by A. L. Duncan and Samuel Livemore Esquires their Attorneys and filed the following answer, to-wit:

THE STATE OF LOUISIANA, by STEPHEN MAZUREAU, Esq., Attorney General,

vs.

MARTIN GORDON & Others.

The answer of Martin Gordon, Richard Relf, David Olivers, John Longpre, David Urquhart, Greenbury Dorsey, W. C. Withers, Thomas S. Kennedy, Eligiers Fromentin, F. A. Blanc, A. L. Duncan, Jos. Workman, The President and Directors of the Orleans Navigation Company, to the information filed by Stephen Mazureau Esq., Attorney General of the State of Louisiana on behalf of said State:

The respondents being cited to show by what authority they claim to be a corporation and to exact tolls from the citizens of the State and other persons navigating the waters of the Bayou St. John and Canal Carondelet, humbly represent and show to this Honorable Court, that, Heretofore, to-wit: on the fourth day of March 1804 an act was passed by the Congress of the United States, entitled, "An Act erecting Louisiana into two territories and providing for the temporary government thereof," that by virtue of the powers granted by the fourth section of the said Act, the
209 Governor and Legislative Council of the Territory of Orleans did, on the third day of July in the year of our Lord Eighteen hundred and five enact a law entitled "an Act for improving the inland navigation of the Territory of Orleans," which act is in the words and figures following to-wit:

Sec. 1. Be it enacted by the Governor of the territory of Orleans by and with the advice and consent of the Legislative Council thereof. That there shall be established a Company for the purpose of improving the inland navigation of this Territory to be called and known by the name of "The Orleans Navigation Company" that the capital stock of said Company shall consist of Two Thousand Shares, not exceeding one Hundred Dollars each and that Joseph Faurie, Francis Duplesses, Julian Poydras, William Kenner, William Wykoff of the Opelousas, Louis Blanc and George Pollock,

shall be and are hereby appointed Commissioners for receiving subscriptions for the capital stock in the said Company and shall enter in the said Books as follows "We whose names are hereunto subscribed, do for ourselves and our legal representatives promise to pay to the Orleans Navigation Company, such sum or sums of money for each share by us subscribed respectively, as the President and Directors of the said Company shall require;" and the said Commissioners shall open the Books for the several subscriptions at the City of New Orleans, and at such places as they may deem proper, on the second Monday of July next, and shall take the subscriptions of every person who shall offer to become a subscriber, until the whole of the stock shall be subscribed, and shall give notice in two of the public papers printed in the said City, both in the English and French Languages of the time and place of opening the said subscription; and directing the sum which the said Commissioners are hereby authorized to determine which such subscriber shall pay for the first payment on every share which the said Commissioners are hereby authorized to receive in money.

210 SEC. 2. And be it further enacted that as soon as five Hundred shares shall be subscribed in the said Company, The persons who shall have subscribed for the said stock, while they continue to be stockholders therein, and all others who may become stockholders of the said capital stock, shall be and they are hereby created and made a corporation and body politic in fact and name, to be known by the name and style of the "Orleans Navigation Company" and by that name they and their successors for ever may have perpetual succession; and by that name the said company shall be and hereby is made able and capable in law to have, purchase, receive, possess, enjoy and retain to them and to their respective successors for ever, lands, rents, tenements, hereditaments, goods, chattels, and effects of what kind, nature or quality so ever, requisite for carrying into effect the purposes of this act, and the same to sell, devise, grant or dispose of; and to sue and be sued, plead and to be impleaded, answered and be answered unto, defend and be defended in the courts of record, or any other place whatsoever, and also to make, use and have a common seal, and the same to break, alter or renew at their pleasure; and also to ordain, establish and put into execution such by-laws, ordinances and regulations as may seem necessary and convenient for the government of the said corporation not being contrary to the Laws of this Territory, or those of the United States, and generally to do and execute all and singular Acts, matters and things which to them it shall or may appertain to do, subject to the provisions hereinafter contained.

SEC. 3. And be it further enacted, That for the well ordering the affairs of the said corporation there shall be twelve directors, to be chosen annually, after the present year, on the first Monday in February in every ensuing year, by the stockholders of the capital stock of the said corporation or their proxies. And those
211 who shall be duly chosen at any election, shall be capable of serving as Directors by virtue of such choice until the Second Monday in February in the year next following such choice, and until others are duly elected in their places. And the said Directors at

their first meeting after such election shall choose one of their number for President. And that as soon as five hundred shares shall be subscribed in the said company, the said Commissioners shall give public notice in two of the newspapers of the time and place of holding an election for Directors of the said corporation, for the present year and it shall be lawful for such elections then and there to be held; and the persons then chosen Directors for the said Company, shall immediately choose one of their number to be their President; and the said Directors shall continue in office until the Second Monday in February in the next year and until others are duly elected in their places: Provided Always, That in case it should at any time happen that an election of Directors should not be made upon any day, when pursuant to this act, it ought to have been made, the said corporation shall not for that cause be deemed to be dissolved, but it shall be lawful on any other day to hold and make an election of Directors, in such manner as shall be directed by the said Commissioners, or by the laws and ordinances of the said Corporation: And provided also, that in case of the death, resignation or absence from the Territory of a director, his place may be filled up for the remainder of the year by the said directors.

SEC. 4. And be it further enacted, That it shall be lawful for the President and Directors to convene special meetings of the stockholders whenever such meeting shall appear necessary giving at least fifteen days' notice thereof, in two of the newspapers printed in the City of New Orleans, in the English and French languages.

212 SEC. 5. And be it further enacted, That the Directors for the time being of the said corporation, shall have power to appoint such officers, Agents, Clerks, Superintendents, Engineers, workmen and others under them, as shall be necessary for executing the business of the said corporation, and to allow them a proper compensation for their services.

SEC. 6. And be it further enacted, That the following shall be the fundamental rules and articles of the said corporation:

1st. Every individual stockholder, or company or body corporate holding shares in the said corporation shall be entitled to one vote for every share not exceeding ten shares which he, she or they may hold in the same.

2nd. No Director shall be entitled to any emolument which shall not have been allowed at a meeting of the stockholders; but the Directors may make such compensation to the President as to them may seem reasonable.

3rd. Not less than seven Directors shall constitute a board, of whom the President shall always be one, except in case of sickness or necessary absence in which case his place may be supplied by any other director, whom he by writing under his hand shall nominate for the purpose.

4th. Every Treasurer before he enters upon the duty of his office, shall give bond with two or more securities, to the satisfaction of the Directors and in such sum as they shall direct.

5th. No bank or officer of Discount shall be established by the said corporation.

6th. The stock of the said corporation shall be assignable and transferable, according to such rules as shall be made in that behalf by the laws and ordinances of the same.

7th. All bills or notes which may be given for the corporation, or their directors, signed by the President and countersigned by the Treasurer or principal clerk, promising the payment of money to any person or persons, his, her or their order, though not under the seal of the said corporation, shall be binding and obligatory upon the same, in like manner, and with the like force and effect, as the same would by law upon any private person or persons, if the same were issued by him or them, and shall be assignable and negociable in like manner.

8th. Half yearly dividends shall be made by the said corporation of such parts of the net profits of the same, among the stockholders, in proportion to their respective shares.

9th. The President and Directors of the said corporation shall have power to direct the mode in which, and the period, when the amount of the shares shall be paid.

SEC. 7. And be it further enacted, That the said corporation, by their President, Directors or Agents may enter into, and upon all and singular the land and lands, covered with water, where they shall deem it proper to carry the canal and navigation herein before particularly assigned, with or without the consent of the owner, or owners thereof, and to lay out such routes and tracks as shall be most practicable for effecting navigable canals as aforesaid, by means of locks and other devices, doing nevertheless as little damage as possible to the grounds and inclosures in and over which they shall pass; and thereupon it shall and may be lawful for the said President and Directors to contract and agree with the owners of any lands and tenements for the purchase of so much thereof as they may deem necessary for the said canal for roads, or any mills, work or buildings adjoining thereto if they can agree with such owner or owners; but in case of disagreement, or in case the owner thereof shall be a married woman, under age, non compos mentis, or out of the territory, then it shall and may be lawful to and for the said President and Directors to cause a survey and map to be made of the ground in their estimation requisite in the Field Book of which survey and map shall be distinguished the land of each of the several owners and occupants, appropriated or intended to be appropriated as aforesaid, and the quality thereof; and shall exhibit the same to a Judge of the Superior Court of this Territory, who shall thereupon by writing under his hand and seal, appoint no less than three, nor more than five discreet persons, none of whom shall be interested in the said corporation, or the land so surveyed as aforesaid, to appraise the premises specified in such Field Book.

And it shall be the duty of the appraisers, or a majority of such as shall be appointed to examine the land of such owner or occupant so appropriated and to ascertain the value thereof, and the damages each may sustain by such appropriation, and to make a regular entry of such valuation and assessment of damages, in a Book to be kept by them for that purpose, and certify the same

under oath, to be a true, fair and impartial valuation and assessment, to the best of their belief; and shall thereupon cause such survey and Book, the execution of the certificate being first duly proved or acknowledged before a Judge of the Superior Court to be filed in the office of one of the public notaries, there to remain on record. And the said corporation and their successors, upon paying to the several owners, the sums of money so assessed as aforesaid, together with the costs of appraisement, shall immediately be vested with a good and indefeasible title to the said lands and tenements mentioned and specified in such Field Book, filed as aforesaid; Provided always, that no lands shall be surveyed and appraised unless with the consent of the owners under this section, which shall extend more than one hundred and eighty feet from the edge of such projected canal or navigation.

SEC. 8. And be it further enacted, that it shall and may be lawful for the President and Directors of said Company and their Superintendents, engineers, artists, workmen, and labourers
 215 with carts, waggons and other carriages, with their beasts of draft and burthen, and all necessary tools and implements to enter upon the lands contiguous or near to the tracts of the intended navigation, first giving notice of their intention to the owners thereof, and doing as little damage thereto as possible, and repairing any breaches they may make in the enclosures thereof, and making amends for any damage that may be sustained by the owners of such grounds by appraisement in manner hereinafter directed, and upon a reasonable agreement with the owners, if they can agree, or if they can not agree, then upon an appraisement to be made by three different persons or a majority of them, to be appointed by any Justice of the Peace for the district in which such lands shall be situated and on tender of the appraised value, to carry away any timber, wood, stone, gravel, sand or earth, there situated most convenient for making or repairing the said canals, navigation and roads.

SEC. 9. And be it further enacted, that as soon as the said company shall have improved the navigation of the Bayou St. John, so as to admit at low tide, vessels drawing three feet water, from the lake Pontchartrain to the Bridge at the settlement of the Bayou, then the said President and Directors shall be entitled to ask, have and receive from every vessel passing in or out of the said Bayou, a sum not exceeding one Dollar for every Ton of the admeasured burthen of the said vessel, and so in proportion for every boat of a burthen less than one Ton. And when farther improvements shall permit vessels drawing three feet water, to pass from the said Bayou by the canal Carondelet to the bason terminating the same at the City ditch, the said President and Directors shall be entitled to ask, have and receive an additional toll not exceeding one dollar per ton as aforesaid; and when the said navigation shall be improved by the said Company so as to admit vessels drawing three
 216 feet water, from the lake Pontchartrain to any place within one hundred yards of the river Mississippi, it shall be lawful for the said Company to have and receive an additional

toll not exceeding one dollar per ton as aforesaid and when the navigation between the said navigation and the river Mississippi, shall be made complete, every vessel passing from the said Navigation, to the said river, shall pay a toll not exceeding five dollars for every foot of the draft of said vessel.

And on every other canal which shall be made or other natural means of navigation which shall be improved by the said company, so as to admit vessels drawing three feet water from the sea or lakes to the river Mississippi, it shall be lawful for the said company to demand, have and receive toll, provided that the said toll shall not exceed in the whole, the sum of Five Dollars for every ton of the burthen of such boat or vessel and so in proportion for every boat of a burthen less than one ton, unless by and with consent of the Governor of the Territory for the time being; and it shall and may be lawful for the President and Directors of the said Company to appoint such and so many collectors of toll, for the passage of boats and vessels, in, through and along the said canal, and in such places as they shall think proper, and that it shall and may be lawful to and for such Toll Collectors, and their deputies, to demand and receive the tolls aforesaid, of and from the persons having the charge of such boats and vessels.

SEC. 10. And in order to ascertain the tonnage of boats using the said canals and navigation, Be it further enacted, that on the request of the owner or supercargo of such boat or vessel, or of the Collector of the said tolls, it shall and may be lawful for each of them to choose one person to measure and ascertain the number of tons which the said boat or vessel is capable of carrying, and to mark the same in figures on the head and stern of the said

boat; and the said vessel so measured and marked shall
217 always be permitted to pass through the said canal navigation, for the price per ton to which the number of Tons so marked shall amount; and if the owner or supercargo of such vessel shall decline choosing a person resident within one league and a half of the place where such toll is payable, to ascertain the tonnage thereof, then the amount of such tonnage shall be fixed by a person to be appointed for that purpose by the said collector of tolls, and said toll shall be paid according to such measurement.

SEC. 11. And be it further enacted, That the Collectors of toll, duly appointed and authorized by the President and Directors of the said corporation may stop and detain all boats and vessels, using the canals and navigation to which they respectively belong, until the owner, commander or supercargo of the same shall pay the toll so fixed as aforesaid, or may distrain part of the cargo therein contained, sufficient by the appraisement of two credible witnesses to satisfy the same, which distress shall be kept by the Collector of the tolls taking the same, for the space of eight days, and shall afterwards be sold by public vendue, at the most public place in the neighborhood, to the highest bidder, in the same manner and form as goods seized for rent are by law sold rendering the surplus on demand, if any there be, after payment of the said toll, and the costs of distress and sale to the owner or owners thereof.

SEC. 12. And be it further enacted, That if any person shall break or throw down any embankment, or other work, lawfully erected by virtue of this Act, or shall forcibly pass through any of the canals or improved navigation, such persons, besides making good all the damage occasioned thereby, shall forfeit and pay in addition to the toll legally due, the sum of one Hundred Dollars, to be recovered by the said treasurer of the said corporation to their use.

218 SEC. 13. And be it further enacted, That the President and Directors may lay out and construct from the Bridge at the Bayou Settlement, a high way or road on each side of the said Bayou, and that if such road or roads shall be constructed of shells, sand or other hard materials, and shall be at least of the breadth of twenty feet, and fit at all seasons for the passage of every kind of wheel carriages, and shall be so certified under oath, by three respectable persons or a majority of them, not interested in the said company to be nominated by the Governor of the Territory, then the said President and Directors may erect a toll gate on each side of such roads, so soon as one league thereof shall be certified to be completed as aforesaid, and that it shall and may be lawful for the person or persons appointed by the said President and Directors to take and receive the following sums for passage through each of the said gates, that is to say.

For every man and Horse, six and a quarter cents, cart, chair or cabriolet with one or more Horses, twelve and a half cents, Coach, Phaeton, or other four wheeled carriage twenty five cents.

SEC. 14. And be it further enacted, That one Hundred shares in the said corporation, shall be secured for the Bank of Louisiana, and one hundred other shares for the City of New Orleans; Provided, the said Bank and the said City shall signify their wish to subscribe for the same, within six months from the passing of this act.

SEC. 15. And be it further enacted, That when the clear profits upon the monies actually paid to the said company upon each share of the capital stock thereof, shall exceed the amount of fifty per cent per annum, for three successive years, the excess of any profits arising thereafter, over and above the said fifty per cent, shall belong to the public exclusively, and shall be disposed of and in such

219 manner as the legislature of the Territory may direct.

SEC. 16. And be it further enacted, that it shall be the duty of the President and Directors of the said Corporation to transmit every year to the Governor and legislative council of this Territory, accounts signed by the President of the sums paid, and the dividends made during each year on each share of the said capital stock of the said corporation.

SEC. 17. And be it further enacted, That the operations of the said Company shall be confined in the first instance to the improvement of the inland navigation of the county of Orleans, and of the Bayou Plaquemine, and that the said company are not nor shall not be authorized to make, open or clear any other canal or navigation, without the consent and approbation of the Governor of this Terri-

tory for the time being, previously obtained for that purpose any thing in this act to the contrary notwithstanding.

(Signed)

J. POYDRAS,

President of the Council.

Approved July 3rd, 1805.

(Signed)

WILLIAM C. C. CLAIBORNE,

Governor of the Territory of Orleans.

Which said last mentioned act these respondents aver to be within the rightful subjects of Legislation, that the same is not inconsistent with the constitution and laws of the United States, and that the same does not lay any person under restraint, burthen or disability on account of his religious opinions, professions or worship. These respondents also aver that the said law enacted by the said Governor and Legislative council as aforesaid, was duly published throughout the said Territory by the Governor thereof and that the said Governor did report the same to the President of the United States to be laid before Congress and further that the said act of the said Governor and Legislative Council was never disapproved of by the Congress of the United States. Your respondents further say, that in pursuance of the said Act of the said Legislative Council, enacted under the authority of the Congress of the United States, subscription Books were opened in the City of New Orleans on the Second Monday of July in the year of our Lord Eighteen Hundred and six, under direction of the Commissioner, named in the said Act of the Governor and Legislative Council, public notice being given as is prescribed in the said act, and that said subscription Books were continued open until five hundred shares were subscribed. And these respondents further show that they are the successors of the said original subscribers and that they have been duly elected according to the provisions of the said Act of the Governor and Legislative Council, the President and Directors of the said Orleans Navigation Company. And these respondents further answering say that the said subscribers to the stock of the said Navigation Company and their successors have, in and by virtue of the said Act and Charter so granted to them as aforesaid, expended large sums of money in improving the navigation of the Bayou St. John and in digging the canal carondelet and that they have so improved the navigation of the Bayou St. John, as to admit at low tides, vessels drawing three feet water from the lake Pontchartrain to the Bridge at the settlement of the Bayou, and that improvements have also been made by which vessels, drawing three feet water, may pass from said Bayou by the canal Carondelet to the Basin terminating the same at the City ditch. Wherefore these respondents humbly show that they claim to be a body, politic and corporate and to exact tolls, from persons navigating the waters of the said Bayou St. John and Canal Carondelet, under and by virtue of the fourth section of the said Act of Congress and under and by virtue of the said above recited law of the Governor and Legislative Council of the

221 Territory of Orleans. And these respondents further represent that the charter so granted to them as aforesaid has been

recognized, approved and confirmed by the Congress of the United States in several acts passed subsequent to the said third day of July Eighteen Hundred and three, particularly by an Act passed on the third day of March, Eighteen hundred and seven entitled "An act respecting claims to lands in the Territory of Orleans and Louisiana" and by an Act passed on the Eighteenth day of April Eighteen Hundred and fourteen entitled "An Act granting to the President and Directors of the New Orleans Navigation Company and their successors a lot of ground." And these respondents also show that the said laws of the Governor and Legislative Council of the Territory of Orleans has been fully recognized, approved and confirmed by the Legislature of the State of Louisiana, particularly by an Act passed on the third day of March, Eighteen Hundred and fourteen entitled "An Act to restrict the powers of the Orleans Navigation Company." And also by an Act passed on the twenty fourth day of March, Eighteen hundred and sixteen entitled "An Act to exempt from tax for a certain time the Orleans Navigation Company." The respondents further represent, that, as the President, Directors, and Company of the Orleans Navigation Company and as a body corporate, they claim a title to so much of the commons adjacent to the City of New Orleans as shall be necessary to continue the canal Carondelet from the present basin to the Mississippi under and by the authority of a clause in a statute of the United States, to-wit, of the third section of an Act passed on the third day of March in the year of our Lord Eighteen Hundred and four entitled "An Act respecting claims to land in the territories of Orleans and Louisiana," and these respondents further shew that in their aforesaid capacity they claim title to a lot of ground in the county of Orleans and State of Louisiana bounded above by the lands of Don Miguel and fronting on the Bayou St. John containing One Hundred and eighty feet front and five hundred and forty feet back, including the

222 improvements thereon, under and by authority of a statute of the United States, to-wit, of an Act passed on the Eighteenth day of April in the year of our Lord Eighteen Hundred and fourteen entitled "An Act granting to the President and Directors of the New Orleans Navigation Company and their successors a lot of ground." And these respondents for answer to the allegations contained in the said information of the said Attorney General, say that their said charter is not unconstitutional & void and that the said President, Directors and Company have been guilty of no nonfeasance or Malfeasance nor of any illegal and oppressive actings and doings, whereby the said Charter can have become forfeited. Wherefore these respondents pray that the said information may be dismissed.

A. L. DUNCAN,
SAMUEL LIVEMORE,
For Def'ts.

Afterwards to-wit, at a session of the Court aforesaid holden on the thirteenth day of November in the Year aforesaid the following

Affidavit was filed and the following orders entered upon Record to-wit:

Affidavit.

STATE OF LOUISIANA
vs.
NEW ORLEANS NAVIGATION COMPANY.

Martin Gordon, President of the Navigation Company and one of the Defendants in the above cause maketh oath that: — Pychorac an Inhabitant of the Bayou St. John is a material witness for the Def'ts. that he has been informed and verily believes that the said — Pychorac is at this moment so much indisposed as not to be able with safety to attend the trial of the above cause tomorrow 223 and therefore respectfully prays a commission to take his testimony de bene ipse.

Signed & Sworn to this 13th day November 1821.

MARTIN GORDON.

Sworn to before me

JOSHUA LEWIS.

No. 3759.

STATE OF LOUISIANA
vs.
MARTIN GORDON & Others.

On motion of A. L. Duncan, Esquire of Counsel for the Defendants, Whereupon ordered by the Court that a Commission issue in this case directed to Charles Maurian, Esquire one of the Justices of the Peace for the city of New Orleans to take the deposition of — Pycharac a witness unable to attend by reason of sickness.

No. 3759.

STATE OF LOUISIANA
vs.
MARTIN GORDON & Others.

On motion of Isaac T. Preston, Esquire one of the Counsel for the Plaintiffs. Thereupon ordered by the Court that a Subpcena Duces tecum issue in this case returnable tomorrow directed to Stephen Lafitte Secretary of the New Orleans Navigation Company commanding him to bring into Court the Books, shewing the amounts paid on the original subscriptions to the stock & the amounts divided by the Company the last four years.

Afterwards to-wit, on the fourteenth day of November in the year aforesaid at a Session of the Court aforesaid holden as aforesaid the

following Return to Commission was filed and the following order entered upon Record to-wit,

224 THE STATE OF LOUISIANA :

(First Judicial District Court.)

To Charles Maurian, Esquire, one of the Justices of the Peace for the City of New Orleans, Greeting:

Know ye, That we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority, diligently to examine all witnesses whatever in a certain suit now pending in our District Court in which the State of Louisiana is plaintiff and Martin Gordon & others are defendants as well on the part of the said plaintiff or of the said defendant. Wherefore, we desire you, that at certain times and places by you to be appointed for that purpose, you cause the said witnesses to come before you, that you then and there examine them apart, upon their respective corporal oaths first taken before you upon the Holy Evangelists: that you reduce their examination to writing, and when you shall have so taken them, that you send the same closed up under your seal to us in our District Court at the City of New Orleans, without delay. And have you then there this Writ.

Witness the Honorable Joshua Lewis, Judge of the said Court, this 13th day of November in the year of our Lord One Thousand Eight hundred and Twenty one and in the Forty sixth year of the Independence of the United States.

H. FARRIE, *D'y Clerk.*

Return to Commission.

By virtue of the Commission hereto annexed I have this day taken the examination and deposition of Jose Pycharac native of Catalonia in Spain & an Inhabitant of the province now State
225 of Louisiana for the last forty years in the presence of Messrs. Preston and A. L. Duncan the one representing the State of Louisiana & the other the Orleans Navigation Company in a suit now pending in the District Court for the first Judicial District in which the State of Louisiana is Pl'ff or complainant, and the said Company Def'ts. The said Jose Pycharac being first duly sworn, declares that he is not directly or indirectly interested in the event of the suit now pending, that he is not a stockholder in said Company. That he has resided in the province and now State of Louisiana for upwards of Forty years—that during the period of his residence in the Province as a Spanish subject he was employed as a Pilot for the King on the Waters of the Bayou St. John & the lakes, that he continued in said employment as a Pilot aforesaid for at least some fourteen or fifteen years. That during that time the Bayou could hardly be called a place to navigate, that the depth of the water instead of being computed by feet was only computed by

inches, & that it was nearly in the same situation that the Banks of the lake are now in; There was nothing like a Pass, and the Deponent will all his life time suffer in consequence of the fatigues which he experienced in bringing in the vessels confided to him. Deponent remembers a circumstance when he was ordered by Baron de Carondelet to bring in a Gun boat (Galesa) in the King's service. That Gunboat drew only five feet of water and she remained one year at the mouth of the Bayou, and it was only by the effect of a Hurricane which occasioned a great rise of water, that she could get in, and she never could get out again. The Deponent has often been obliged to remain with a Piroque four or five days out of the Bayou, for want of water, and has never seen more than 14 or 15 inches of water on the bar, and that was only in very high tides, unless when it blew a hurricane from Northeast. Deponent recollects frequently that even in his passage down the Bayou, he was obliged to unload his piroques to cross the Bar which then existed at the mouth of Maxent's mill race, now Marigny's Canal, and that he well recollects, whilst lighting vessels with flatboats (Chalous) to have been detained four or five days before he could cross the Bar at the mouth of the Bayou; The Chalous or flat boats of which he speaks might draw when deeply loaded 15 or 18 inches water, but never more. And that the whole of the bar was dry except a pass about fifteen feet wide, which at the lowest tides had only from 8 to 13 inches in depth, and that the said Bayou and the Bar at the mouth of it, continued in the same situation or rather worse, until the Navigation Company under the American Government took charge of it. Deponent speaks of the whole of the said space of time in which he was employed as well under the Governor Carondelet as under Governor Casa-Calvo and particularly during the Spanish expedition against Bowles on the Apalachicola. Deponent well recollects the Pickets that were planted at the pass or Bar by the Baron de Carondelet, that they were intended for no other purposes than to keep off the sand, that no passage was dug by the Baron to Deponent's knowledge and that the said pickets did at no time to his knowledge, serve to increase the depth of the water on the bar. There was during the time of the Spanish Government, plenty of chicots in the Bayou, which were for the most part removed afterwards by the Navigation Company; but at the time of Macarty's crevasse a few years ago, some chicots again were floated into the Bayou and planted there. That he has not been lately in the habit of going down the Bayou, but knows at this present moment of no chicot impending the navigation. The chicots in the Bayou were generally under water and difficult to be seen or removed.

Cross-examined by J. T. PRESTON, Esq., on the part of the State,

Deponent is no otherwise employed by the Navigation Company than by keeping the Bridge of the Bayou, and that he does not call it being in the Navigation Company's employ, because he is ap-

pointed by the corporation of the City of New Orleans, which pays a part of his salary and the Navigation Company pays the balance in consequence of an agreement existing between them that he gets \$250 from each pr. year. What Deponent's residence for the last thirty years has been where it now is, when on shore, and when employed as a pilot on the lake, it was to conduct vessels to Tchefuncta River, Amite, Mobile, Pensacola &c. where the King's service required it. Whenever the vessels were of a small size he conducted them sometimes to the Bayou Bridge, but when they were large they remained out-side of the pass. About thirty years ago a large schooner was built on the Bayou near Maxent's mill race, and she was with much trouble taken out of the Bayou but could never be brought in again. Another very flat Schooner was built near the present bridge, and is now still to be seen in the Bayou and belongs to Mr. Blanc, she then drew about three feet 3 inches water, when loaded, and about 14 or 15 inches when empty. Deponent knows also of a good many schooners which were repaired at the Bayou bridge. In the Spanish time Deponent himself and other schooners sailed up to Carondelet's basin, but with much labor. There might be about 50 vessels including the trade of Pensacola, coming into the Bayou and none of them above the burthen of 20 tons, and they all were obliged to unload even to their cables and anchors as well to pass the bar as to pass Maxent's Canal, and hardly one in the course of the year could reach the Bridge without unloading, then only in extraordinary times. Deponent often saw in the Spanish time, many sail vessels moored at the bridge at the same time. When those vessels had taken their cargoes in town, they were obliged to unload as before stated to descend the Bayou. The expedition against Bowles was composed of the vessels navigating on the Bayou, which carried the troops & were joined on the lakes and off Pensacola by the armed vessels. The largest of those transports was the Louisa, belonging to La Coste. They all took in the Troops and the provisions at the Bridge. They were about five or six in number. The pickets planted by Baron de Carondelet extended about two thirds of the distance from the mouth of the Bayou to the present light house. The shallow water of the pass or bar began about sixty or seventy feet beyond the mouth of the Bayou, or from the corner of the old fort. The narrowest and shallowest place on the Bar, was just in the middle of the Pickets and was kept open by the vessels ploughing through it.

Principal examination resumed:

At the time of the taking possession of the Country by the Americans, none of the Bayou sail vessels could ascend canal Carondelet; the canal was nearly dry, and the cows in passing and repassing filled it up constantly.

His
JOSE x PICHARACA.
mark.

Sworn to and subscribed before me New Orleans, Nov. 13th, 1821.
CHARLES MAURIAN,
Justice of the Peace.

1st Section, City of New Orleans.

Order.

No. 3759.

STATE OF LOUISIANA

vs.

MARTIN GORDON & Others.

This cause came on today to be tried before the Court.

Mazuriau & Preston for Pl'ffs.

Duncan & Workman for Def'ts.

Whereupon after hearing testimony ordered by the Court to be continued till to-morrow.

Witnesses for the State:

1. Vincent Rillieux.
2. Alexis Rochon.
3. Alex. Milne.
4. Pierre Baarn.

Witnesses for Def'ts:

5. Paul Lanusse.
6. Louis Blanc.
7. E. Roquigny.

229 Afterwards to-wit, on the fifteenth day of November in the year aforesaid at a Session of the Court aforesaid holden as aforesaid the following order was entered upon Record and the following Testimony filed, to-wit:

No. 3859.

STATE OF LOUISIANA

vs.

MARTIN GORDON & Others.

This cause came on again this day to be tried before the Court.

Mazuriau & Preston for Pl'ffs.

Duncan & Workman for Def'ts.

Whereupon after hearing testimony of witnesses ordered by the Court to be continued till to-morrow.

Witnesses for Def'ts.

1. Louis Allard.
2. Guillaume Benite.
3. Honbl. James Pitot.
4. Jos. Rabassa.
5. J. H. Holland.

Testimony.

STATE OF LOUISIANA

v.

ORLEANS NAVIGATION COMPANY.

Testimony Taken in Open Court on the Part of the Pl'ffs, on the
14th Nov'r, 1821.

Vincent Rillieux witness for the State sworn, being asked if whether to his knowledge during the time the Spanish Government had possession of Louisiana, and also during the time the Country was in possession of the French Government the Bayou St. John & the Canal Carondelet were not navigable—says, that they were—That during this period a Schooner belonging to the father of witness drawing three feet and a half water traded from the Lake to the Basin—Witness thinks that this Schooner traded till the year 1802 or 1803—Witness knows that till the year 1803, the same schooner when the water was high could approach to within a little distance of the Basin to the half Moon then there—That in 1806 the Navigation Company had not commenced to work on the Canal, but had begun some works at the Pass from the Bayou into the Lake—That these latter works did not at all facilitate the Navigation of the Canal at the time when in 1806 the above-mentioned Schooner navigated it, as the Pickets were then only beginning to be placed. That the principal difficulty in the navigation of the Bayou & the Canal consisted in a bar at the mouth of the Bayou at its entrance into the Lake, and from the falling in of the Banks of the Canal & and the deposits from the sewers of the City;—That previous to the erection of the navigation company, a considerable commerce was carried on by way of the Bayou & Canal with Pensacola, Bay St. Louis, Apalachicola, and the other side of the Lake, and a considerable number of vessels chiefly schooners employed in this trade—That the Canal and basin was dug by order of the Baron Carondelet while Governor of the Colony, for a public navigation—That he also planted pickets extending in form of a half moon from each side of the mouth of the Bayou into
231 the Lake—These pickets were furnished by planters on the other side of the Lake, each furnishing his proportion—These pickets still remain and extend to within about 200 feet of those placed by the Navigation Company—

Cross-examined:

Being asked if he is not proprietor of a Lime Kiln on the other side of the Lake, says that he is not, that the establishment belongs to his mother and was adjudicated to her at the sale of his father's property—That witness conducted this commerce for account of his mother—They had formerly two vessels employed in the trade, at present there is but one;—

It is admitted that the Canal does not extend further than the Basin and is not carried to the river Mississippi—

ALEXIS ROCHOU free man of colour, witness for the State being asked what was the depth of water on the Bar at the mouth of the Bayou during the time the Spanish Government had possession of Louisiana, says that in ordinary tides the depth of water was three feet, and in extraordinary, three feet and a half—That witness was employed thirteen months during the above period in a Schooner belonging to M. Bonabel; that he traded on the Lake and Canal, that, this schooner drew five feet water when loaded and two and a half when in ballast—That in high water this schooner could pass from the Lake into the Bayou, but at low water they were obliged to unload her before she could enter—That at this period vessels traded by way of the Bayou to Apalachicola, Mobile, and Pensacola; but these vessels were not numerous—That the schooner in which witness was employed could pass at all times in ballast over the bar at the mouth of the Bayou—Witness has seen the bar once dry but this was at a time when the water was extraordinary low, and the general depth was two feet and a half—That the greatest difficulty in the navigation of the Bayou was the Bar which was about four arpents outside of the mouth of the Bayou where it falls into the Lake—That inside there were however
 232 a great many trunks of trees in the Bayou which impeded the navigation;—Witness being asked if many of the vessels which traded to Pensacola & other places before mentioned did not enter the Canal Carondelet and come up to the Basin, says, that a few of them when the water was high (Marie haute) came up as far as the half moon then in existence, but none of them ever came as far as the basin,—this was at or about the time the Country was taken possession of by the American Government.

Cross-examined:

That the depth of water on the Bar formerly, was at the lowest tides one foot and a half—That loaded vessels were frequently obliged to discharge their cargoes on the outside of the bar in order to pass it—That at this time a Mr. Periquet then Commandant at the Fort & a Mr. Miguel had a number of flats which they kept for the purpose of hiring to discharge vessels wanting to pass the Bar—Witness does not recollect the number of these flats thinks they were generally three or four in number.

Principal Examination Resumed.

That the winds which cause the water to rise in the Bayou, are East and North East, and those which cause it to fall are the South and South West—the wind at South also causes a small rise in the water.

ALEXANDER MILNE witness for the State, sworn, being asked what the state of the navigation of the Bayou was, up to the time of the American Government getting possession of this State, says, that he knows nothing as to the depth of water then in the Bayou, but that the Bayou was then very full of stumps of trees which rendered the navigating it dangerous—Witness has stuck in it himself in

a skiff—that a great many old trees also overhung the Bayou and rendered it dangerous to persons passing—that these have been cleared away by the Navigation Company—That during this
 233 time a considerable number of small schooners & crafts navigated the Bayou—that at low water it was difficult to get over the Bar, but at high water they passed—Some of these according to their size came as far as the Bridge, some as far as the half moon and some (the smallest) as far as the Basin of the Canal Carondelet. That the Canal Carondelet was dug by order of the Baron Carondelet for public use—That the Canal was public property during the time the Country was under the Spanish Government—Witness does not know to whom the soil on which the Canal was dug belonged to.

PIERRE BAAM witness for Plffs: That he commanded a schooner which traded on the Bayou during the time of the Spanish Government. That at this time the depth of water on the Bar at the mouth of the Bayou was at the greatest height of water four feet and a half, and the lowest one foot and a half. That the schooner in which witness traded drew four feet and a half when loaded. That at the time the American Government took possession of this Country the vessel in which witness traded which drew three feet and a half and four feet when loaded, always came up to the Basin to discharge—that this Canal and Basin did not last long, that the Canal got filled up by cattle passing it. That during the above period it was the practice of the witness to wait on the other side of the Lake till the wind should cause the water to rise at the pass of the Bayou and to pass the bar with the high water. That witness had to stop some-times outside of the Bar and unload his vessel in a flat before he could cross the Bar. That at the above period vessels were longer in performing their voyages than at present, as when the water fell they were obliged to wait till it rose before they could get out, and they could not go out and in at pleasure as they do at present. Witness being asked if vessels did not at the above period make their voyages nearly as regularly as they do at present, says, that in general they did;—That the vessels took in their loading at the Bayou St. John. That vessels at this period
 234 paid no toll for navigating the Canal and Bayou, and only a Dollar each vessel for the Bayou Bridge. That there were three Bars at the mouth of the Bayou over which they had to push their vessels—these three were altogether about fifty or sixty feet in breadth, but witness cannot be positive as to this. That witness being asked if these bars were not outside of the Bayou & in the body of the Lake says, that they were about two to three acres outside of the mouth of the Bayou—Witness being asked on how many points of the compass the wind makes high water at the mouth of the Bayou & on how many points it makes low water, says, that east, north east & south east raise the water, & north west, west and south west cause it to fall—that the wind at north and south has no effect on the water—That the winds which raise the water are those which most generally prevail during the year—That the winds which depress the water most generally blow during the

summer—That during summer some people lay up their vessels, & the trade is greater during the spring and fall, than during the summer.

Testimony on Part of the Defendants.

STATE OF LOUISIANA

v.

NEW ORLEANS NAVIGATION COMPANY.

Testimony Taken in Open Court on Part of the Defendants 14th November, 1821.

PAUL LANUSSE witness for Defendant sworn—says that he has resided in Louisiana since the year 1796—That the period of witness arrival in this Country in the above year the Bayou was not greatly navigable (beaucoup navigable) that there were some times small vessels at the Basin but in general vessels were compelled to unload before they could cross the bar at the mouth of the Bayou—That at the period the American Government took possession of this Country, the Canal & Bayou could not be navigated by large vessels—That in the year 1805 it was the duty of Witness as a member of the navigation Company to sound the Canal and Bayou, 235 that witness found them both in a very bad state & not at all navigable unless at high water—that he means by being in a bad state and not navigable, that the Canal at lower water was nearly filled up and that there was a bar at the mouth of the Bayou and a great many trees in it. Witness has now no interest in the Navigation Company.

Cross-examined:

That witness knows that the whole of the stock of the Company has been paid up—and he also knows that the whole of the tolls received by the Company and their Capital has been expended on the amelioration of the navigation of the Canal and Bayou, and the proprietors of stock remained some years without receiving a single cent of dividend on their shares—Witness being asked if in the year 1804 or 1805 he did not see schooners at the Bayou Bridge, says, that he has—that in general none but small schooners navigated the Bayou at that period—Witness knows that the proprietors of vessels had a flat (chalon) for the purpose of unloading their vessels before crossing the Bar at the mouth of the Bayou—Witness being asked whether in 1805 vessels did not come up as far as the half moon, then on the canal, says that he does not know, but that the water must have been very high to take them up to that place—

LOUIS BLANC, witness for Defendants sworn, says, that he arrived in this Country in the year 1796—That he has resided at the Bayou St. John since the year 1788—That on witness's first arrival in the Country there were few inhabitants on the other side of the Lake & the few that resided there made pitch & tar which they carried in pirogues to New Orleans for sale—At this period there were

few or no schooners employed trading on the Lake and Bayou—That about two years before the American Government got possession of this Country, Witness had a schooner on the Bayou which he wished to dispatch for Pensacola—That after being loaded witness was obliged on account of bars in the Bayou, to cause her to

236 be unloaded three times before she could proceed—That the last time she was unloaded at the Bar at the mouth of the Bayou, & the vessel was obliged to wait twenty six days before it was possible to get her out of the Bayou in ballast, and at last witness was obliged to cause her to be laid on her side & got her out in that way. That during all this time there was only one foot of water on the bar & the schooner passed when it rose to one foot & a half. That witness kept a flat (chalon) at the Bayou for the purpose of saving the charges generally paid for the chalons to unload vessels crossing the Bar—That witness lost one or two cargoes of his vessels in thus unloading—That the charge for a chalon was two dollars and a half, besides the hire of persons employed—That the schooner alluded to by witness drew deeply loaded three feet ten inches to four feet—and in ballast one foot & a half—Witness being asked what the state of the Canal at the time the American Government got possession of this Country —, says, that hardly a pirogue could enter—That witness in the year 1806 had his schooner employed in the same trade as that of V. Rilleux—that this vessel was the same size as that of the witness and drew the same water—That witness's schooner never entered the Canal Carondelet at that period, & carried the pickets which he had generally loaded on board in flats to the City—That he knows that until the Navigation Company removed the obstructions at the mouth of the Bayou, that in the winter as well as the spring vessels frequently when loaded with pitch and tar & with cattle to throw their cargoes overboard—

Cross-examined:

Being asked if in the year- 1804 & 1805 he has not seen schooners at the Bayou Bridge, says, that he has seen small vessels there at that period—but not so many as at present—that at that period vessels of Twenty tons could scarcely get in, & witness has since the establishment of the Company seen three Brigs of 150 Tons each at the same place—That at this period all the vessels

237 which traded on the Lake came at one time or other to the Bayou Bridge, by means of the chalons with part of the cargo of the larger vessels following them—That at this period there were vessels which traded to Mobile, Bay St. Louis, Pensacola Apalachicola & the other side of the Lake, but these were few in number—That during the time of the Spanish Government & up till the cession of the Country to the United States, vessels were built and repaired at the Bayou Bridge—Witness is in the employment of the Navigation Company, but has not interest whatever in the issue of this cause.

ETIENNE ROQUIGNY, witness for Defendants sworn.

The above witness not examined.

Testimony on Part of Defendants Continued.

15th NOVEMBER, 1821.

LOUIS ALLARD witness for Def'd't sworn—says, that he returned to this County from whence he had gone when young in the year 1800, & he has resided at the Bayou St. John ever since—That at this period that is to say in 1800, the navigation of the Bayou was very much obstructed by chicots on which the vessels (Goellettes) often remained a long time stuck fast, and was also often obstructed by fallen trees—That at this time there were three bars in the Bayou which impeded the navigation—Witness has known a schooner remain for three weeks aground on that opposite Marigny's Canal, and has often seen other vessels aground on the other bars—That as to the bar at the mouth of the Bayou where it falls into the lake, witness has seen it often with very little water on it and recollects a chalon belonging to his father which was at this period employed in carrying shells remained eight days abandoned on the bar outside aground for want of water, altho' this chalon drew only from a foot to fourteen inches water—That in the ordinary times of low water there was about two feet to two feet and a half on this last bar—That the inhabitants on the other side of the Lake have from practice learnt to discover when the water was high or low on this Bar, & sometimes remained a month at home

238 waiting for a rise of water on the bar—That when the water was very low witness has known a hunter's pirogue touch going over this Bar—That at this period a number of chalons were kept at Fort St. John for the purpose of unloading vessels to enable them to cross the bar at the mouth of the Bayou—That the expense at the above time (when everything was cheaper than at present) for unloading a vessel of Twenty tons and putting the cargo into the chalons to enable the vessel to cross the bar, would have been about thirty dollars if the vessel was loaded with tar or pitch or other articles of easy transport—that for lime it would cost more—That besides the inconveniences of unloading the vessels at the bar, the Chalons on account of the several other bars inside, were compelled to take their loading up as far as the Bayou Bridge by which means the Cargoes of the vessels were often damaged in bad weather—Witness himself had a cargo of peltry damaged in this way—That at the time of witness' arrival in this Country from France, altho' the Canal Carondelet was very recently finished, it was however even at that time so obstructed that only very few of the smaller sort of vessels entered it for fear of being left by the fall of the water & not being able to get out—That at the time of the cession of this Country to the United States, this Canal was so much abandoned that even in high water the number of vessels which entered it was so small as hardly to be worth mentioning—That in general the obstructions to the navigation of the Bayou were so numerous and so great that witness is convinced that at the above period the persons having occasion to transport goods or produce on it would willingly have paid double the duties which are not exacted by the Navigation Company to have the advantages

which are enjoyed at present. That at the present time the whole of the trees which obstructed the navigation of the Bayou, have been cleared out with the exception of one or two which in very low water still embarrass the navigation—that at present vessels of the largest size to wit of forty five to fifty tons pass without any
 239 obstacle at high & low water—Vessels of 150 tons have lately entered the Bayou—At present vessels from Havana, Pensacola, & from the different northern States arrive at the Basin of the canal Carondelet of the burthen of from forty to sixty tons.

Cross-examined by Pl'ffs:

Being asked if whether at the formation of the Navigation Company there were not a great many schooners which traded to the Bayou St. John from the other side of the Lake and from other places—Witness says, that there were, that almost all the Planters on the opposite side of the Lake had each a schooner & they had no other means of communicating with New Orleans and disposing of their produce—Witness thinks that the whole number of vessels trading at this time to the Bayou St. John, from Pensacola, Bay St. Louis and the opposite side of the Lake might be about thirty five including five or six small Oyster Boats—That the whole of these vessels generally loaded & discharged at the Bayou Bridge or near it—That witness thinks that at this period there might be a vessel trading to the Bayou of the size of 30 tons, but this was a rare circumstance and a vessel of 20 to 25 tons was at that time esteemed a large vessel. That at this period the vessels were constructed with flat bottoms to draw little water—That at this period vessels of the size usually navigating the Bayou and belonging to the King of Spain arrived at the Bayou Bridge—Witness knows that one vessel was built at the Bayou Bridge before the establishment of the Navigation Company, and others repaired and fitted out—Witness knows that the Canal Carondelet and the Basin were dug by orders of the Baron Carondelet, then Governor of the Country for the public use and benefit, and no toll was paid for vessels entering and going out—Witness being asked if the greatest difficulty and obstruction to the Navigation of the Bayou is not the bar outside of its mouth, says, that this bar is not more difficult
 240 than the others inside—That in the years 1811 & 1812, the navigation of the Bayou St. John was so much improved by the Navigation Company that chaloups were no longer employed to unload vessels entering or going out.

GUILLAUME BENITE witness for Defendants sworn—says, that he has resided in this State for forty two years, and commanded a vessel on the Bayou for six years about thirty seven years ago—That during this time up to the period of the establishment of the Navigation Company and Navigation of the Bayou St. John was in a (triste) melancholy state and not at all so navigable as at present—Witness means by (triste) state that it was navigable with great difficulty—That about thirty seven years ago there was no large vessels on the Bayou and only pirogues which traded to Mobile and

Pensacola—That the obstructions to the navigation of the Bayou at this time were fallen trees chicots and sand bars formed from the mouth of Marigny's Canal down to the mouth of the Bayou—That at this period there was at the highest water when the wind blew hard at north east only three feet to three feet and a half on the bar at the outside of the Bayou and about a foot to fourteen inches at low water—That at the time of the cession of this State to the United States, the Canal Carondelet was not at all navigable even for pirogues, but was filled up by the falling in of the banks and cattle passing as far up as the Half moon then existing—Witness knew the schooner employed by M. V. Rilleaux at this period in his trade to the other side of the Lake—Witness knows that M. Rilleaux kept a chalan at Fort St. John for the purpose of unloading his schooner to allow her to pass the Bar—From the size of M. Rilleaux's schooner she must frequently got aground in the Bayou and on the bar outside, as there was not water enough during two thirds of the year for a vessel of the size of M. Rilleaux's Schooner—Witness being asked, what is the present state of the navigation

241 of the Bayou St. John and Canal Company with what it was in the period he has been speaking of, says that there is as much difference as between day and night. That at present witness knows of a vessel carrying 550 Barrels that enters the Bayou without touching and goes out also. That witness knows that formerly a vessel of any tolerable size loaded with lime could not approach the Bar at the mouth of the Bayou without considerable danger.

Cross-examined:

That the vessel formerly employed by M. Rillaux carried 200 barrels. That in the year 1805 there might be about twenty vessels employed in the trade on the lake and to Mobile and other places—that the whole of those vessels when the water *allowing* them discharged at the Bayou Bridge—that some were obliged to remain outside of the bar and discharge their Cargoes—That about thirty five to forty years ago there were schooners which traded to the Bayou—the largest he knew of these carried about 19 to 20 Tons and were flat bottomed—That the pirogues mentioned by witness as traders to Mobile and Pensacola, had sails and had decks and had only two men on board of each—that they sailed across & did not coast it.

Hon'ble JAMES PITOT witness for Defendants sworn, says that he was the first President of the Navigation Company on its erection—That he has now no interest whatever in the same—That on his first arrival in this Country about twenty five years ago, witness entered by the way of Bayou St. John coming from Pensacola in a small vessel of 18 to 20 tons—That on his arrival at the pickets outside in the evening the witness was informed by the Captain that he must pass the night there as there was not water sufficient to cross the Bar, unless he would go in his the Captain's Pirogue to the Bridge, which witness did and left the vessel outside—that at this time there

242 was not more than ten or twelve inches water on the bar—Witness was obliged next day to hire a boat to take himself and family up to the Bayou Bridge—That witness at this time and several years afterwards had many occasions to observe the State of the Bayou and has seen vessels aground on said bars and stuck fast on logs in the Bayou, and has seen them throwing their ballast overboard into the Bayou—Witness recollects of once seeing some gentlemen at the mouth of the Bayou going to Pensacola who had been waiting five or six days for the rise of water—at this time there was not a foot of water on the bar—Then when witness was appointed Director of the Company he had several opportunities of examining the state of the navigation of the Bayou and Canal Carondelet—That in the year 1796 there were two or three small schooners in the Basin of the Canal but it was so filled up, that they remained there two or three years before they could get out—that the navigation of the Canal had entirely ceased except in extraordinary high water—That as to the Bayou at the time of the establishment of the Company, witness knows that besides the sand bars in the inside of the Bayou, there were ten or twelve places where it was impossible to pass except in high water from the logs which obstructed the Bayou.

Cross-examined:

Witness being asked whether before the establishment of the Company vessels did not trade from the Bayou St. John, says, that he has seen vessels at the Bayou Bridge; these vessels when they could get over the obstructions to the navigation went up to the Bridge and unloaded—Witness supposes that there were other vessels besides the one freighted by him trading from Pensacola to the Bayou—That vessels which formerly made one voyage a month, after the establishment of the Company made four voyages a month—Witness knows that the Canal Carondelet was dug by order of the Baron Carondelet for the public use and no toll was paid by vessels entering it—That this Canal was entirely useless two
243 years after it was dug, and almost filled up—Witness has crossed it often when dry.

JOSEPH RAVASSA, witness for Defendants sworn, says, that he is in the employment of the Navigation Company but has no share or interest in the same—Witness is a native of Louisiana and has been well acquainted with the Navigation of the Bayou St. John for twenty three years past—Being asked the state of the Bayou and the obstructions to the navigation of the same before the erection of the Navigation Company, says, that the Navigation of the Bayou at this time was very bad, that the chief obstructions inside of the Bayou were a long sand bar opposite Bienville Island on which there was not much more water than on the bar at the mouth of the Bayou and the Island was filled with stumps of trees & logs and roots—above the Island there was another sand bar, on which there was a little more water than on the first bar & thence to the Bridge, the navigation was obstructed by a great many logs and a

sand bar opposite Maxent's Canal now Marigny's. That vessels employed in the navigation of the Bayou were at this time obliged to hire Chalans almost every trip to unload them or else they were obliged to throw part of their Cargo overboard, and were often obliged to send their Cargo up to the Bridge in these Chalans and sometimes to put part of it on shore before they could proceed—Witness being asked what the expense of these chalans in unloading a vessel of 20 tons loaded with barrels would be, says, that including delay it would cost from Twenty to thirty dollars—That at the time of the cession of this Country to the United States or about a year and a half after, the state of the Canal Carondelet was very bad—That the Basin was almost filled up, & also the Canal as far as the half moon—That when the roads are good it would cost about Ten dollars Cartage to load a vessel of Twenty tons at the Bayou Bridge—That since the improvements made by the Navigation Company the Bayou is navigable for vessels drawing six feet water, & on the bar outside, there is always three feet and a half water at the lowest water—That vessels drawing three feet water came up

244 to the Basin of the Canal, and in high water vessels drawing five feet enter the Canal—That vessels of the burthen of from 50 to 70 Tons trade to the Bayou and Basin from Havana, Pensacola and the northern states—That there may be upwards of one hundred vessels employed in the trade on the Bayou and Basin—Witness knows that the improvements he describes in the navigation of the Bayou and Canal are entirely owing to the works of the Navigation Company—Witness has worked at these himself—Witness has, when employed in deepening the Bar at the mouth of the Bayou, got eight feet water on it, and next day by a strong north west wind it would be diminished to three feet.

Cross-examined:

Says, that said rigged vessels came and anchored at the Bayou St. John previous to the cession of this Country to the United States—Witness supposes that these vessel might be from 20 to 30 in number—that about three or four of these vessels went as far as St. Marks and from the different places on the other side of the Lake—these vessels were generally loaded with tar, pitch, bark and lime, & vegetables & fowls, for New Orleans—That in high water all these vessels came up to the Bridge and unloaded their cargoes; and in low water after unloading into the chalans and taking it in again, then after passing the last bar took it in again and unloaded at the Bridge, and some sent their cargo in the chalans up to the Bridge—That for one that passed without unloading three had to unload before arriving at the Bridge.

J. H. HOLLAND, witness for Defendants sworn, says, that he has been acquainted with the Navigation of the Bayou and Canal Carondelet since the year 1802—That at this time (1802) the navigation of the Bayou was very bad and impeded by sand bars and the Canal was not at all navigable for a loaded vessel except immediately

245 after a gale at northeast—That witness is satisfied from the state in which the Navigation of the Bayou and Canal are now compared with what they were formerly that it would cost more to navigate it formerly (that is to say before the improvements made by the Navigation Company) than it would do at present paying the tolls of the Company, and this besides the risk of lives—That witness was once in a small vessel of only three or four tons, which grounded on the bar outside and was shipwrecked and one of the hands perished—That after passing the bar outside, the navigation of the Bayou was tolerably good from the Fort till within about a mile of Bienville Island, that from thence to the Canal of Marigny there was almost— continued obstruction of logs and sand bars—That at the time the company commenced their operations the pass opposite Marigny's canal was nearly filled up and would in a short time have become totally impassible. That vessels loaded at the above period at the Bayou Bridge. That the road from the City to the Bayou Bridge was in general very bad especially in the winter. That the charge for a load from the City to the Bridge was generally from ten bits to a dollar and a half & in bad weather they would charge a dollar for a single barrel—that vessels were sometimes detained a considerable time at the Bridge waiting for a Cargo on account of the badness of the roads. Witness knows M. V. Rilleaux and that he had two vessels at the above period employed in the trade on the Bayou, which he sometimes sailed himself. Witness has seen the vessel in which M. Rilleux was, which was of a considerable size, but very flat aground on the bar at the mouth of the Bayou and has seen M. Rilleux in the water himself employed in pushing his vessel off. Witness has known four or five vessels at a time aground on this Bar at a great risk, and often detained for a considerable time. That witness recollects in the year 1804 of ten or twelve vessels nearly all light being detained at the Fort ten to fifteen days waiting for water to go across the Bar and among these was the vessel of M. V. Rilleux—besides these vessels at the Fort there were several at the Bridge which would not venture down.

246 Cross-examined:

That previous to the year 1805 there were several vessels as large as that of M. V. Rilleux, but she was one of the largest. That there was a vessel still larger belonging to M. Parent which witness has known to lie three weeks before it could cross the bar. That the number of said vessels at this time employed in the trade of the Bayou was, from 40 to fifty, of which, about ten belonged to the Lake and the remainder to Mobile, Pensacola and other ports. That of these three or four anchored outside and unloaded, the remainder when entering loaded, always unloaded before crossing the bar, & twice afterwards, inside before getting up to the Bridge. Witness thinks that when he entered with a loaded vessel he was compelled three times out of four to unload before crossing the bar. That in 1802 there were pickets at the mouth of the Bayou extending to about two thirds the length of those placed by the Navigation Com-

pany. That the most difficult part of the navigation of the Bayou St. John was on the bar about one hundred yards from the Margin of the Lake. That no duties were paid by vessels on the Canal Carondelet which was free to the public. Witness would however prefer paying the duties paid at present to suffering the obstructions and delays formerly sustained.

It is admitted that the Navigation Company had so far finished their works that they had commenced receiving duties under the Territorial Government, that is to say previous to the years as will more fully appear from the Books of the Company to be produced in evidence.

The plaintiff introduces in evidence the original subscription Books of the shares of the stock of the Navigation Company.

It is admitted that the following is a copy of an original
247 letter from the Quarter Master General's office at Washington & may be read in evidence as such:

QUARTER MASTER GEN'L'S OFFICE, *June 23rd, 1820.*

SIR: Your letter of the 19th ulto. has been received & submitted with its inclosures to the inspection of the Secretary of War, who directs that both the Canal and Bayou fees on the public transports be paid. The former must not be incurred hereafter except when it becomes necessary that the Schooners should ascend to the Basin in order to load.

I am sir,

Your ob. serv't,

T. CROSS,
A. D. Q. M. G'l.

Capt. Theo. F. Hunt, A. D. Qr. M's'r. New Orleans.

It is admitted that the Charter or Law of the Orleans Navigation Company, recited in their answer on file in this case is correctly set forth.

Receipt.

| | |
|---|------------|
| Amount of 1847 Shares @ 100 per share.. | 184,700 |
| Amount of Toll received—for the Bayou Pass..... | 157,935.28 |
| For the Canal Carondelet..... | 33,630.98 |
| Profit resulting of shares & Divid'd for- feited, &c. | 191,566.26 |
| Amount of 374 loads of earth sold pro- ceeding from the Canal..... | 3,291. " |
| Amount of rent received on lots near the Basin | 43.4 |
| | 16,553.19 |

Expenditure.

| | |
|--|------------|
| Cost of the works erected at the pass of the Bayou St. John..... | 84,463.80 |
| Cost of the Canal Carondelet and Basin..... | 56,389.58 |
| Salary of the Officers of the Company: | |
| President | 4,136.25 |
| Treasurer and Secretary | 13,952.65 |
| Collector | 10,605.75 |
| Command't for Fort St. John | 1,830. " |
| Keeper of the Drawbridge... .. | 187.50 |
| Incidental expenses | 30,712.15 |
| Rent and charges of the Office..... | 3,336.4 |
| Printing & Gazettes..... | 5,665.90 |
| Lawyers' fees and charges of the Courts..... | 2,767.62 |
| Dividends declared | 5,856.66 |
| Lots of land purchased from the Charity Hos- pital, rent & charges included..... | 119,467.10 |
| Survey of the Lot, at the mouth of the Bayou, granted by Congress to the Company..... | 28,633. 8 |
| Tax paid to the State..... | 33. " |
| Repairs of the damage occasioned to the works, by Macarty's crevasse..... | 2,276.10 |
| Levelling the earth -round the Basin..... | 23,774.86 |
| Cost of the Mud machine and 2 Flat boats... | 344. " |
| Bill of exchange remitted to Cox Barnett, in Paris (France) | 1,729.21 |
| | 342.86 |

THE STATE OF LOUISIANA.

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CARONDELET CANAL & NAVIGATION COMPANY VS.

| | |
|---|------------|
| Enclosure, banquettes, &c., of two lots near the Basin No. 12 & 21 | 120.99 |
| Cost of a skiff | 70. " |
| Raising the Schooner Susan, sunk in the Basin | 20. " |
| Salary paid to the overseers of the works at the Pass & Bayou | 1,606. " |
| Negroes' hire employed at said works, &c. | 3,953.62 |
| Two Instalments paid Allard, on 10 Shares in the road, from the Bayou to Lake Pontchartrain | 1,000. |
| Cost of the new drawbridge at the Bayou | 2,129.83 |
| Loss on Interest and on the account of Jn Gourjon, &c. | 2,811.53 |
| Advance made to Jeremiah Miller, on Timber for the Works to be made for extending the pass of the Bayou | 500. " |
| Expense in relation to said works. | 64.80 |
| | <hr/> |
| | 380,038.73 |
| Balance remaining in Bank | 16,084.76 |
| | <hr/> |
| | 396,153.49 |

396,153.49

Stephen Lafitte Secretary to the Orleans Navigation Company being sworn, says that the above two sheets exhibit the exact situation of the affairs of the Orleans Navigation Company up to the 30th day of June last. That the Company commenced receiving Toll on the 12th day of July, 1908, and the whole amount of the stock

subscribed except a few shares to wit one hundred and fifty three which have been forfeited to the company has actually been paid by the stockholders, the above being extracted from the Books of the Company.

STEPHEN LAFITTE.

Sworn to & subscribed in open Court this 16th day of November, 1821.

H. FARRIE,

Dy. Clerk.

250

Dates of Installments Required from the Stockholders.

| | | |
|------------------------------|-----|------|
| 1806, in January, 1st..... | one | 10th |
| " in October, 2nd..... | one | 10th |
| 1807, in September, 3rd..... | one | 10th |
| 1808, in May, 4th..... | one | 10th |
| " in December, 5th..... | one | 10th |
| 1809, in May, 6th..... | one | 10th |
| " in November, 7th..... | one | 10th |
| 1812, in October, 8th..... | one | 10th |
| 1814, in May, 9th..... | one | 10th |
| " in September, 10th..... | one | 10th |
| the last one. | | |

[On right margin:] The Orleans Navigation Company, commenced collecting Toll for the Bayou's fees on the 12th day of July, 1808.

251 Afterwards to wit on the sixteenth day of November in the year aforesaid at a session of the Court aforesaid holden as aforesaid the following order was entered upon Record to wit:

No. 3759.

STATE OF LOUISIANA

v.

MARTIN GORDON & Others.

This cause came on again this day for trial before the Court.

Mazureau & Preston for Plff.

Duncan & Workman for Def'ts.

Whereupon after argument, Ordered by the Court to be continued till Monday next.

Afterwards to wit on the nineteenth day of November in the year aforesaid at a session of the Court aforesaid holden as aforesaid the following order was entered upon Record to-wit:

No. 3759.

STATE OF LOUISIANA

v.

MARTIN GORDON & Others.

This case came on to day for trial before the Court.

Mazureau & Preston for Plff.

Duncan & Workman for Def'ts.

Whereupon after hearing argument, Ordered by the Court to be continued till to-morrow.

Afterwards to wit on the twentieth day of November in the year aforesaid at a session of the Court aforesaid holden as aforesaid the following order was entered upon Record to-wit:

No. 3759.

STATE OF LOUISIANA

v.

MARTIN GORDON & Others.

This cause came on again this day for argument before the Court.

Mazureau & Preston for Plff.

Duncan & Workman for Def'ts.

Whereupon after hearing argument, ordered by the Court that the same lie over for consideration.

252 Afterwards to wit on the twenty seventh day of November in the year aforesaid at a Session of the Court aforesaid holden as aforesaid the following Judgment was entered upon Record to-wit:

No. 3759.

STATE OF LOUISIANA

v.

MARTIN GORDON & Others.

The Court having maturely considered this case to day gave the following Judgment in writing and, ordered the same to be recorded which is as follows to-wit:

The Governor and Legislative Council under the late Territorial Government were authorized to legislate on all rightful subjects of Legislation and all acts passed within the pale of this authority had the force of law until disapproved by Congress—By an Act of the Governor and Council passed on the — day of —, 1804, they incorporated a Company for the purpose of improving the internal navigation throughout the then Territory giving to the Company certain exclusive privileges—On the part of the State it is contended first—That this was not a rightful subject of Legislation within the meaning of the Act of Congress—Secondly that the Bayou St. John at the time the Company was incorporated was a navigable stream belonging to the public and could not be alienated—Thirdly that Congress has disapproved of the Act incorporating the Company by declaring as one condition upon which this should become a State that the waters emptying into the Mississippi and Gulf of Mexico should for ever be free &c. Fourthly—That so much of the Act as imposes a tonnage duty is unconstitutional inasmuch as the consent of Congress has not been obtained. Fifthly—That they have forfeited their charter by nonfeasance viz: in not connecting the Canal with the river.

It would be a waste of words to notice the first objection because it must strike the sense of every one that the internal improvements of a Country is the great business of a Legislature such
253 as making Canal public roads, and improving water courses of difficult and inconvenient navigation for the purpose of facilitating the commerce of the Country—

The proposition contained in the second objection is as a general one correct, but public convenience and public necessity ought and must in certain cases make exceptions to it. This proposition applies as well to public roads as to water courses. A public road may be practicable and yet so inconvenient and difficult that public necessity requires great amelioration, this a State may do, and may establish turnpikes and exact toll as a remuneration for their disbursements—This right grows out of public necessity and is superior to all law, and so far from being a public burthen it as a great public benefit. This principle is acted upon in all Countries. If a State can rightfully do this they unquestionably can cede this right to one or more individuals who will take upon themselves the burthen—It is true that the Bayou St. John was at and before the time the Company was incorporated navigable for small schooners at high water, but was certainly unnavigable at low tide. This was often the cause of much risk of lives and property outside the Bar.

The change of Government gave an impulse to industry and Commerce which they had not before known. It was found that the navigation of the Bayou St. John was so inconvenient & difficult as to be impracticable for vessels necessary to carry on the increasing commerce through the Lakes—Public necessity the public interest required that the difficulties should be removed. To effect which the Navigation Company has been incorporated and the Legislative Council had competent powers to grant the Charter—

The testimony in the cause bears me out in saying that the Commerce necessary to pass through this channel could not be carried on had not the obstructions been removed by the Company.

It is contended that Congress by their Act authorizing the people of the Territory of Orleans to form a state Government declaring as one of the conditions that the waters emptying into the Mississippi and the Gulf of Mexico should be forever free, has
254 disapproved the Act of the Legislative Council, and that it has from that period ceases to be law.

This Act of Congress cannot receive such a construction from any reasonable mind without carrying with it the imputation of the most odious injustice. If we judge them by their own acts we find that so far from disapproving the act incorporating the Company they have offered to contribute means to carry it into full effect, and by their several acts in relation to this Company they have given their assent to the law incorporating it as far as that assent could be required to be expressed. I may go further and say that there was but one way of disapproving the laws of the Legislative Council and that was by some special act or resolution of Congress referring specially to the particular law intended to be disapproved. I am not permitted after what Congress has done to encourage the operations of the Navigation Company to suppose for a moment that they intended by their Act of —, 1811, to take away their charter. They could not possibly have meant that this Act should apply to the Bayou St. John.

The objection to the constitutionality of the law as authorizing the Company to impose a tonnage duty is not well founded. This is not that kind of tonnage duty within the meaning of the Constitution of the United States, which requires the consent of Congress. It is nothing more than a tax or toll as a reasonable remuneration for disbursements in improving the navigation of the Bayou. It is no more a tonnage duty than a tax laid upon Waggon's passing over a Turnpike road charging so much for every ton they carried would be a tonnage-duty within the meaning of the Constitution. The Company having been constitutionally created the same right under their charter to exact toll or tonnage duty as the owner of a private wharf or Dock would have. It is private property as regards this right.

As to the fifth objection I will barely state that the Company
has not had with their means a reasonable time to connect
255 the Canal with the Mississippi if public expediency required it. Independent of this I may safely say that no Charter

has ever been forfeited for nonfeasance where there is no limitation in point of time. It is agreed that there has been no mal-feasance.

There has been on the part of the State, no good cause shown why this Court should declare the Charter of the Navigation Company void.

It is therefore ordered and adjudged that the writ Scire facias be dismissed with costs.

And afterwards to wit on the fourth day of December in the year aforesaid into the Court aforesaid holden as aforesaid came S. Mazureau Esquire Attorney General for and in behalf of the State of Louisiana aforesaid and filed the following Petition of Appeal to wit:

To the Hon. Joshua Lewis, Judge of the District Court of the First District of the State of Louisiana:

The petition of Stephen Mazureau Attorney General of the State of Louisiana for and on behalf of said State respectfully sheweth:

That your Petitioner thinks that the Judgment of this Honorable Court in the case of the Scire facias issued out of this Court on behalf of the State of Louisiana against the Orleans Navigation Company is contrary to law & Justice.

Wherefore your Petitioner for and on behalf of said State respectfully prays an appeal in said case from said Judgment to the Supreme Court of this State, on complying with the formalities of law.

As in duty bound your Petitioner &c.

MAZUREAU,
Att'y Ge'l.

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Judge's Order.

An appeal is allowed returnable on the tenth Instant.

The appellant giving bond and security in the sum of one hundred dollars condition- as the law directs.

Decem'r 4th, 1821.

JOSHUA LEWIS.

NEW ORLEANS, 4th Decem'r, 1821.

I do agree, that the appeal in this case be taken up to the Supreme Court without giving the security as required.

MARTIN GORDON,
Pres't Orleans Navigation Company.

STATE OF LOUISIANA:

First Judicial District Court.

I hereby certify that the above and foregoing fifty five pages contain a full and complete transcript of the Record now on file in the office of the Clerk of said Court in the case wherein the State of

Louisiana is plaintiff and Martin Gordon & others are Defendants under the No. 3759.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at the City of New Orleans, on this sixth day of December in the year of our Lord One thousand eight hundred and twenty one.

(Signed)

H. FARRIE,
D'y Clk.

[SEAL.]

257 In the Supreme Court.

THE ORLEANS NAVIGATION COMP'Y
advs.

THE STATE OF LOUISIANA.

Points of Agreement on Which the Defendants Will Rely.

Law of Nation & Nations. Const. of U. S. Treaty of Cession.

I. The power of governing territories acquired by purchase or conquest is incident to every Sovereign State; & and the government established by Congress in the late territory of Orleans was not in violation of any provision of the Constitution of the United States, or any article of the Treaty of the Cession of Louisiana.

II. The improvement of the internal navigation of the said Territory was a rightful subject of Legislation; & the Governor & Legislative Council had authority to grant charters for that purpose; as well to improve the navigation of streams already navigable in some degrees, as to make artificial canals.

Proved by the practice of many civilized States: England, France &c. also, Acts for improving the navigation of this State

2. Mart. Dig. 330; 342, 350.

3. " " 150; 160, 166.

And that of other States.

1 Virginia Code p. 440, 446.

2 " " appendix, 1 to 10.

" " " " 22, 27, 55.

Laws of Maryland 1784 (confirmed since by Const. for the improvement of the Patowmack—

4 Pennsylvania Laws, 88, 257, 264, 267.

5 " " 250-290.

6 " " 179, 244.

258 And various laws of the State of New York, Vermont &c.
&c.

3. The toll imposed on vessels by the Navigation Company is not such a tonnage duty as is prohibited by the 9th Sect. of the 1st Article of the Constitution of the United States; but a lawful compensation paid for the improvement of the Navigation of the Bayou &c. Nor is said toll a duty or impost in the true construction of those words.

4. If said toll can be considered a tonnage duty, it is lawful, inasmuch as congress have consented thereto:

Witness their Acts.—

1 Mart Dig. 250, 360, 366.

See also States Laws 3 M. Dig. 196.

And 1 Mart. Rep. 270.

5 “ “ 507.

5. No article in the Treaty of Cession forbids the formation of canals or the improvement of navigable waters, by means of incorporate companies, any more than the formation or improvement of roads or bridges by similar means.

6. There is nothing in the act of Congress, Feb. 20, 1811 for the admission of the State of Louisiana in to the Union, which is violated by the exaction of the Tolls in question—

7. If there were any thing in said act prohibiting to the State of Louisiana the exercise of any right belonging to the original States, such prohibition would be a violation of the Constitution of the U. States & of the third article of the Treaty of Cession.

8. No alienation of any port or navigable water has been authorized or has taken place by the charter of the Orleans Navigation Company. The Bayou St. John & the Canal Carondelet are & have been common high-ways for the use of all the citizens of the United States.

9. With regard to the disposition of any part of the soil belonging to the U. S. none but the U. States have any right to question
259 the defendants If they have cut through any part of said soil, the Congress of the U. S. have consented thereto.

See the Acts of Congress aforesaid.

10. The said Company have not forfeited their charter by non-feasance.

11. The said Company have expended the whole of their capital, in good faith in making & improving the Navigations aforesaid; and they could not be deprived of their rights therein, even if their charter was not valid, without being previously indemnified.

With respect to the construction of Charters & Laws that have been long acted upon.

See 1 Cranch, 309, respecting the Circuit Courts.

4 Wheaton, 401, “ The Bank question.

“ “ 624, “ Dartmouth College &c.

3 Mart. Rep., 669, “ Special administrator.

(Endorsed:) Sup. Court. 642. The Orleans Navigation Co. advs. The State of Louis'a. Points & authorities of the defendants & appelless. Filed December 19th, 1821. N. B. Le Breton, Cl'k.

Supreme Court.

THE STATE OF LOUISIANA

VS.

THE ORLEANS NAVIGATION COMPANY.

Points & Authorities on Behalf of the State.

The object of the present proceeding is to enquire into the Constitutional validity of the charter of the Orleans Navigation Company. The Company are required by the State to shew by what authority they claim to be a corporation and to exact tolls from the citizens of this State and other persons navigating the waters of the Bayou St. John & Canal Carondelet. They answer that on the 4th day of March 1804, an act was passed by the Congress of the United States entitled "an act erecting Louisiana into two territories & providing for the temporary government thereof" that by virtue of the powers granted by the 4th Section of said act the Governor & Legislative Council of the Territory of Orleans did on the 3rd day of July 1805 enact a law entitled "an act for improving the inland navigation of the Territory of Orleans" which act organized the Company & gave them the powers and privileges which they claim & exercise.

1. Congress have no power to govern the Territories of the United States & their acts for the Government thereof are null. Const. U. States Art. 4. Sect. 3 No. 2.—Do. Art. 1 Sect. 8 No. 16 Amendments Art. 10—C. U. S. Art. 1 Sect. 8 Nos. 17, 10 Art. 2 § 2 No. 2.

2. If Congress have power to govern the Territories of the United States, they could not delegate that power to the Governor & Legislative Council of the Territory of Orleans. Const. U. States Art. 1 Sec. 1. Mart. Rep. Vol. 7 pa. 5. 6. 7. Tuckers Black. Vol. 1 part 1st—page 277—8 appendix.

261 3. The Bayou St. John was at the time of the organization of the Navigation Company & is now a port & navigable water of the United States. Dig. L. U. States 3 Vol. page 571—2 Acts of Congress 1816 page 79 & see the evidence.

4. The 9th Sect. of the Charter of the Company imposes a tonnage duty upon all vessels entering said water & port. The imposition of said duty is a violation of Art. 1 Sect. 9 No. 3, of the Constitution of the United States. "The Congress shall have power to regulate commerce with foreign nations & among the several States."

5. The imposition of said tonnage duty is in violation of Art. 1 Sect. 8 No. 1 const. U. States "but all duties imposts & excises shall be uniform throughout the United States."

6. The imposition of said tonnage duty violates Art. 1 sect. 8 No. 5, Const. U. States "No preferance shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another."

7. The imposition of said tonnage duty is in violation of Art. 1

sect. 10 No. 2 const. U. States, "No State shall without the consent of Congress lay any duty of tonnage." The consent of Congress was never given.

8. The imposition of said tonnage duty violated the 3rd Article of our treaty with France ceding Louisiana to the United States.

9. The imposition of said duty was contrary to the 1st sect. of an act of Congress passed the 2nd March 1805 & an ordinance for the Government of the Northwestern Territory dated the 13th July 1787. See 1. Mart. Dig. page 168, 170 & 196.

10. The exaction at present of said duty is in direct violation of the fundamental conditions of the admission of the State of Louisiana into the United States. Dig. L. U. States, Vol. 4 page 361, 329, 402. And here we maintain that if said duty was right-

262 fully imposed, Congress was not restrained from abolishing it. Const. U. States Art. 1, Sect 10 No. 1.

11. The Governor & Legislative Council of the Territory of Orleans were restrained to rightful subjects of Legislation. In alienating or even regulating the ports & navigable waters of the United States they did not act upon a rightful subject of Legislation. Vattel 178; Hall's L. Journ. 58, 59; Civ. Code 94, 96 Transl. part 1 Vol. pa. 337; 5 Law Journ. 37, 39 Pot. Traite de propr. No. 52 Donat Liv. 1 Tit. 3 sect. 1 No. 5, 1 Black Comm. 264 Harg. de port. Mar. ch. 7 Coop. Just. page 68.

12. The Governor & Legislative Council of the Territory of Orleans were restrained from the primary disposal of the soil of the United States. Dig. L. U. States page Vol. 3 page 603. They have disposed of the soil on which the canal is dug which belonged to the United States (in the evidence) 1 Trans. part 183 & 7th sect. of their charter. All the citizens of the United States have a free right of passage over the said soil. 1 trans. part page 432.

13. The Navigation Company have forfeited their Charter by nonfeasance in not completing the canal from the Basin to the Mississippi river.

(Endorsed:) Sup. Court. 642. State of Louisiana vs. The Orleans Navigation Co. Points & authorities on the part of the plaintiffs and app'nts. Filed December 19th, 1821, N. B. Le Breton, Clerk.

The Orleans Navigation Company caused the greater part of the property purchased from the Hospital to be divided into thirty four lots and sold them on ground rent on an annual interest
263 of six per cent for the gross sum or capital of \$98,325. That the said Company was obliged to take back four of those lots, the purchasers having failed to pay the reserved interest—which reduces the gross am't of sales to the sum of Eighty seven thousand, eight hundred and twenty five dollars.—signed & admitted in open Court this 20th day of Dec. A. D. 1821.

A. L. DUNCAN &
J. WORKMAN,
Counsel of the N. Comp'y.

(Endorsed:) 642. Supreme Court. Orleans Navigation Co. advs. The State of Louisiana. Filed December 20th, 1821. N. B. Le Breton, Clerk. Admission on the part of the O. Navigation Company to be made part of the record.

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MONDAY, APRIL 8TH, 1822.

The Court met.

Present the H'ble G. Mathews, the H'ble F. X. Martin, the H'ble Alex. Porter.

642.

THE STATE OF LOUISIANA, Appellant,

vs.

THE ORLEANS NAVIG'N Co., Appellee.

On motion of James Workman, Esq., praying the Judgment of the Court in this case, it is ordered that the Attorney General be allowed twenty one days from this date to answer the arguments submitted on the part of Defendants.

Extract from the Minutes.

[L. s.]

N. B. LE BRETON, *Clerk*.

(Endorsed:) 642. Supreme Court. The State of Louis'a. Appellant, vs. The Orleans Nav'n Company, App'ee. Copy of Order. Served a copy of the within order on Mr. Mazureau April 9th, 1822, & returned April 9th, same year. J. M. Martin, D'p'ty Sheriff.

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THE STATE

vs.

NEW ORLEANS NAVIGATION COMPANY.

The Court, having heard the plaintiff's & defendant's counsel at March term, ante 38187 gave time to the former to reply; which he afterwards declined.

MARTIN, *J.*, delivered the opinion of the Court.

The Attorney General has sued out a writ of Scire facias to avoid the charter, or act of incorporation of the defendants, on the ground that it is absolutely void, or that they have incurred a forfeiture of it by nonfeasance.

There was judgment in favour of the defendants & the State appealed.

Her counsel denies the political existence of the legislative body who granted the charter and urges that it is inconsistent with the constitution & laws of the United States.

He boldly contests the power of Congress to govern the territories & contends that, admitting they possess, they could not delegate it.

On this part of the case it would perhaps suffice to repeat what we said a few years ago, when pressed to declare that the office of the special administrator had no legal existence.

"The governor construed his commission as extending to the exercise of legislative powers in this and similar instances, in which he never was censured. The judiciary of the late territory sanctioned his conclusion, by sustaining suits and giving judgments in several instances, in favor of that officer. Till the institution of the present suit, no doubt appears to have been harbored of the legality of the office. Many states have been settled by the special administrator. It would be attended with monstrous consequences, if by declaring that the office never legally existed, this court were to annul the various transactions of the several incumbents who filled it."

266 "When, in the case of *Stewart vs. Laird*, 1 Cranch, 309, a judgment was sought to be reversed, on the ground that the judges of the Supreme Court of the United States had no power to sit as Circuit Judges, without having been appointed as such, (in other words, that they ought to have received distinct commissions for this purpose) that court thought it sufficient to observe that practice and acquiescence for a period of several years, commencing with the organization of the judicial system, afforded an irresistible answer, and had indeed fixed the construction; that it was a cotemporary interpretation of the most forcible nature, and this practical exposition was too strong and too obstinate to be shaken or controlled. They concluded the question was now at rest, and ought not to be disturbed." *Rogers vs. Beiller*, 3 Martin, 669.

A majority of the members of this court sat for years, as judges of the late territory. The very acceptance of their commissions was a decision, on their part, that the offices had a legal existence. Had they been afterwards convinced of the illegality of their offices, they could only have declared it, by descending from their seats; for, if they were not legal magistrates, they had no capacity to say so. It was their misfortune to be at several times called upon to exercise the most solemn and awful parts of their functions—to pronounce sentence of death. Can they harbor the idea of having done this without any legal authority?

Can the present court say that they have, for several years past, disposed of the fortunes of their fellow-citizens, according to the acts of a legislature, which never had a legitimate existence.

If any doubt could be entertained, it would certainly vanish on consideration of the part of the constitution of the United States, to which the counsel for the State has drawn our
267 attention:

"Congress have the power to dispose of and make all needful rules and regulations, with regard to the territory, or other property of the United States."

Now a very needful regulation, with regard to the land of the United States, considered as the subject of property, is to provide for its settlement.

The individuals who are to settle on it, must be designated, and when there, must have some kind of government given them. Otherwise, if any individual have a right to remove thither, and

those thus assembled may establish a government of their own, independent of and uncontrolled by the authority of the United States, would not the acquiescence, of the latter be an implied relinquishment of their title. Would not a State thus erected, be at liberty to decline being incorporated into the Union?

The legislature of every State relieves itself from the burden of making, and the details of, particular laws, necessary or useful for the particular government of cities, towns, &c., by clothing aldermen, selectmen, trustees, commissioners, &c., under certain restrictions, with a portion of its authority. To Congress, a relief of the kind, with regard to the territories of the United States, was essential. Nearly one-fourth of the year was requisite for the expedition of the legislative concerns of the late territory of Orleans. It cannot be imagined that Congress, a much more numerous body, sitting at the distance of fifteen hundred miles, with one delegate only from that territory, could have performed the same labour in the same time; and when it is considered that there were half a dozen of territories, it will be seen that Congress could not have legislated for these, even if they sat during the whole year, and bestowed their whole attention exclusively to the framing of laws for the territories.

268 We conclude that the power of making all needful rules and regulations, in regard to the territory of the United States implies that of providing a government for those who inhabit it; and that, as in this respect, the constitution has imposed no restraint, Congress well might establish such territorial, legislative, executive, and judicial departments, as to them appeared proper.

The grant of the defendant's charter appears to have been within the scope of the powers, vested by Congress in the Governor and Legislative Council of the territory — Orleans; for these were expressly extended to all rightful subjects of legislation.

The restriction which Congress imposed was that the territorial laws be not inconsistent with the constitution and laws of the United States; that they lay no person under any restraint, disability or burden, on account of religion; that they do not dispose of the soil, tax the land of the United States, nor interfere with land claims.

The Governor was directed to report the laws to the President of the United States, that they might be laid before that body, on whose disapprobation they were to cease having any validity.

We are next to enquire whether the charter violates any of these restrictions.

The counsel for the State, urges that it is inconsistent with the provisions of the 8th, 9th, and 10th, sections of the first article of the constitution of the United States.

"All duties, imposts and excises shall be uniform through out the United States." Sec. 8. "Congress shall have power to regulate commerce with foreign nations." Id.

"Vessels, bound to and from one State, shall not be obliged to pay duties in another." Sec. 9. "No State shall, without the consent of Congress, lay any duties of tonnage." Sec. 10.

The duties, mentioned in the 8th section, are therein described to be those which are laid, "to pay the debts, and provide for

the general welfare" to fill the public coffer; not retributions, like the toll permitted by the charter, to be received by individuals (on account of some improvement made by them, at their own costs) and paid by those who are benefited thereby.

As early as 1790, i. e. at the first Congress, after the adoption of the Federal Constitution, that body gave its assent to—

A law of the State of Rhode Island, to incorporate certain persons, by the name of the River Machine Company.

A law of the State of Maryland, to appoint wardens of the port of Baltimore, and an act supplemental thereto.

A law of the State of Georgia, laying and appointing a duty of tonnage for the purpose of clearing the river Savannah, and removing wrecks and other obstructions therein. 2 L. U. S. 181, 192, 258 and 532.

Neither of these laws are within our reach; but their titles show that probably all (and certainly the last) were for laying a retribution of the same nature, as that established by the defendant's charter. Laws for the improvement of a water course, by means of a duty or toll, to be levied on vessels afterwards using it. Yet neither of the legislatures of Rhode Island, Maryland or Georgia, nor that of the Union, considered these laws as inconsistent with the Constitution of the United States, because the duties laid, are not uniform throughout the United States, interfere with the exclusive power given to Congress to regulate commerce, and sanction a duty to be paid in one State, by vessels coming from another.

These State laws were continued, and the continuing laws assented to, in 1792, 1798, 1800 and 1808.

270 In 1798, Congress gave their assent to a law of the State of Massachusetts, incorporating certain persons to keep in repair a pier at the mouth of Kennebunk river, and providing a duty for their reimbursement. 3 L. U. S. 35.

In 1802, Congress assented to a law of the State of Virginia, relating to the navigation of Appamatox river. *Id.* 474. And in 1804, to a similar one, in regard to James river. *Id.* 586.

In 1804, to a law of the State of South-Carolina, authorizing a duty of not more than six cents per ton, on all ships and vessels of the United States, returning to the port of Charleston from a foreign port. *Id.* 10. The act was revived in 1809.

In 1805, a law of the State of Maryland was assented to, for the collection of a duty of one cent per ton, on all foreign vessels, coming into the port of Baltimore, to defray the expences of quarantine regulations, *Id.* 640.

In 1811, the same assent was given to a law of the State of Georgia, establishing the fees of the harbour-master of the port of Savannah. *Id.* 348. The act was revived in 1813.

These acts, to which our attention has been drawn, by the counsel for the State, are conclusive evidence of the early, deliberate and continued opinion of the national legislature, and of those of so many of the most important members of the Union (Massachusetts, Rhode Island, Maryland, Virginia, South-Carolina and Georgia) that the navigation of water courses may be improved, and the necessary funds procured or reimbursed by a duty raised on vessels navigating

it, commensurate with the object, with the assent of Congress, without violating any of the parts of the Constitution of the United States.

But it is urged, that the duty which the defendant's charter authorizes them to collect, has not been laid with this assent.

It does not necessarily follow, that because the constitution requires this assent to a State, it is essential to a territorial law.

The State laws are passed without the agency, and are beyond the control of the government of the Union. Those of the Governor and legislative council were passed by an officer and an assembly composed of members, appointed by the President of the United States, and ceased to be of any force as soon as it pleased Congress to express this disapproval.

The ones were therefore to be presented for the assent of Congress, before they went into operation; and this because, after they were in vigor, they were out of the control of Congress. The others were not to be presented for the sanction of Congress, by an explicit assent, but submitted to their consideration and silent acquiescence, which left to that body the free exercise of the right it had reserved, of annulling them at will.

But let us view the case in the light in which the counsel for the State is pleased to present it to us: as if the assent of Congress was equally necessary to the territorial as to a state, law.

The constitution does not require an express assent, and the counsel for the defendant urges, that as to their charter, an implied one is necessarily to be inferred.

This instrument bears date of July, 1805, a short time before the beginning of the first session of the ninth congress, during which it must according to the provision cited, have been submitted to that body. The session ended without the disapprobation of the charter.

The silence of the national legislature was a manifestation of its will, that the acts should provisorily continue in force.

The same Congress, at its second session, on the 3rd of March 1807, manifested, by procuring to the new corporation, the gratuitous conveyance of a requisite strip of land, their wish that it should continue its operation, by continuing the canal,

which they were improving, from its basin to the Mississippi; an object, which the succeeding Congress appear to have so much at heart, that they appropriated \$25,000 towards the attainment of it.

In 1814, the fourteenth, and in 1816, the sixteenth Congress gave the corporation new pledges of their countenance and favour, by the grant of a lot of land, in each of these years.

Repeated laws of Congress, expressly adding to the means which the territorial legislature, for the completion of the object, for which the defendants were incorporated, may well be considered as an avowal that Congress did not disapprove the law, which gave them a political existence. Vol. XI M. L. 1, p. 321.

The court *quo* considered, it so, and concluded that the charter had the implied assent of Congress—a conclusion in which we readily concur.

It is further urged that if the charter be not inconsistent with any part of the Constitution of the United States, it is however so, with several acts of Congress, viz. the acts of March 27th, 1804, and March 2nd, 1805, anterior to, and that of February 20th and March 3rd, 1805, and April 8th, 1812, posterior, to its date.

In the act of 1804, (quoted by the counsel for the State, ante 79) 3 L. U. S. 626, we have sought in vain for the provision which the counsel recites. We have, however, found in an act of the 3d. of March 1803, to which the act of 1804 is a supplement. Id. 553, sec. 17. It is there said, "that all navigable rivers, within the territory of the United States, south of the State of Tennessee, shall be deemed to be, and remain public highways." The date of the act being anterior to the treaty of cession, Louisiana made no part of the territory of the United States; it is not therefore clear that the provision extends to it.

The act of 1805 extends with some modifications, the ordinance of 1787, to the territory of Orleans. One of the provisions 273 of this instrument is, "that all the navigable waters leading into the St. Lawrence and the Mississippi and the carrying places between the same shall be common highways, and forever free, as well to the inhabitants of the territory, as the citizens of the United States, or those of any other State that may be admitted into the confederacy, without any impost, tax or duty therefor."

The counsel for the defendants has shewn that neither the character of a public highway, nor its freedom is incompatible with its subjection to some rule.

Freedom does not preclude the idea of subjection to law. Indeed it pre-supposes the existence of some legislative provision, the observance of which insures freedom to us, by securing the like observance on their part.

The freedom of navigation, stipulated for other citizens of the United States, is that which those who inhabit the territory enjoy.

As a public highway, the river may be freely navigated by either, up and down, for the conveyance for hire, of persons and property. Not so across, at such points where ferries are established by law, nor within a certain distance above or below. The freedom, stipulated for by the ordinance, is not so absolute, as to be inconsistent with submission to ferriage laws, securing to the citizens residing within or without the territory the convenience of finding, at suitable places, at all times, and for a fixed compensation, the means of crossing.

Nor with quarantine laws, which forbid the advance in the midst of the shipping, anchored before a city, of vessels, having, or even suspected to have on board, persons labouring under a contagious disease, to the danger or the terror of its inhabitants.

Nor with a submission to pilotage laws, which, compelling, or inducing a pilot to venture at a great distance from a dangerous 274 coast, to afford his skilful aid to vessels, oblige a master, who declines his services to make him some compensation for his labour and risk. 2 Martin's Digest, 408, n. 7.

Nor with a submission to a law, which provides a compensation for the labour and expence, bestowed by an individual or corporation, on the improvement of the navigation of a water course, at-

tended before with difficulty and danger, to be paid by those, who by such means navigate it with ease and safety.

But it is stated, the ordinance stipulated not only for the freedom of navigation, but also for an exemption of any impost, tax or duty therefor.

These words we think, must be confined to the idea which they commonly and ordinarily present to the mind; exactions to fill the public coffers, for the payment of the debt, and the promotion of the general welfare of the country; not to a retribution, provided to defray the expenses of building bridges, erecting causeways, or removing obstructions in a water course, to be paid by such individuals only who enjoy the advantage, resulting from such labour and expense.

We conclude, that the district judge correctly declined to consider the charter of the defendants, as inconsistent with any of the acts of Congress passed before its date.

The first act, passed since the date of the charter, which is said to be incompatible therewith, and consequently is held to repeal it, is that of the 20th of February, 1811.

Congress in this act, were pleased to impose as a condition precedent, of the admission of Louisiana into the Union, that a clause should be inserted in an ordinance of the convention, which framed the State Constitution, providing, "that the river Mississippi, and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said State, as to other citizens of the United

275 States, without any tax, duty, impost or toll therefor, imposed by the State." 4 L. U. S. 329.

The next act, is that of the third March following, by which Congress directs, that all the navigable rivers and waters of the territory of Orleans, shall be, and forever remain public highways. *Id.* 361.

The last is that of April 8th, 1812, by which the provisions of the clause, the insertion of which they had proposed as a condition precedent, are made conditions subsequent of the admission of the State into the Union. *Id.* 402.

The admission of the State into the Union, as soon as possible, was a matter of right, secured by the treaty of cession. To it no condition, either precedent or subsequent, could be imposed by Congress.

To an anticipated admission, that body could impose conditions precedent, which the people might accept or reject.

Thus, before the population of the intended State amounted to 60,000 free persons, the number, which, under the ordinance, entitled the people to admission as a State, Congress thought fit to propose an anticipated admission, on certain conditions and restrictions, which were accepted, with some modification, by the convention.

For example, Congress proposed that a constitution should be framed, "containing the fundamental principles of civil and religious liberty." One was framed containing no principle of religious liberty. The only part of it in which religion is noticed, is the 22nd Section of the 2nd Article, providing that no clergyman, priest or

teacher, of any religious persuasion, society or sect, shall be eligible to the general assembly, or to any office of profit or trust; a restriction on, rather than a recognition of the principles of religious liberty.

Congress proposed that all the records of the State of every description, should be preserved in the language in which the constitution of the United States is written. The provision was confined to the public records of the State.

The proposed clause in the ordinance of the convention, was absolutely neglected.

The absolute acceptance of the propositions of Congress being refused, Congress might have declined to receive the qualified one, and forborne for the moment, to admit the State to the Union. This, they did not do.

They impliedly waived the absolute compliance with the proposed terms, relating to religious liberty, and the language of the records, by approval of the constitution, and admitted the State into the Union, with a proviso, that the former terms should be taken as a condition, upon which Louisiana was incorporated into the Union.

In the treaty of cessions, an unconditional incorporation was stipulated for. According to the ordinance, admission was promised, on an equal footing with the original States.

Now that the State is incorporated into the Union, she must be so on an equal footing, free from any condition, subsequent, to which the people did not agree.

She is not admitted on an equal footing with the State of New York, if she must allow the free navigation of the Mississippi to the citizens of that State, while her citizens are not allowed that of the Hudson; nor if they be while she must give a parchment security, while the State of New York gives none. Vol. XI Sig. L. 2, p. 329.

It cannot be said, that by putting the State Government into operation, the people accepted the conditions subsequent, annexed by Congress to the admission of the State. They were not called upon to consider them.

The President of the Convention, who issued his proclamation for holding the elections, had no authority to accept any condition, and could not bind the people; neither could the officers, who presided at the elections. A single vote, in a parish, would have been

sufficient to elect a senator or a representative. Had the people determined to decline putting the state government into operation by refusing to elect members of the general assembly, they could not have effected their purpose, without an almost unanimity.

We conclude, that neither the existence of the defendants, as a corporate body, nor any of their rights, under the charter, is affected by any act of Congress, passed since its date.

It does not appear to us, that there has been any alienation of the soil, nor that the bayou has ceased to be a public highway.

The court *a quo* acted correctly in declining to declare that the defendants' charter is null and void.

The defendants have shown that the whole of their capital has been fairly expended in improving the navigation of the bayou, clearing the canal and basin.

There is no evidence before us of the probable expenses that would attend the continuing the canal from the basin to the Mississippi.

They cannot command one cent of the \$25,000 appropriated by Congress. This sum is placed at the entire disposal of the President of the United States.

The court a quo does not appear to us, to have erred in refusing to pronounce that the defendants' charter has been forfeited by non-feasance.

It escaped its notice, that the State can never be condemned to pay costs in her own court, and it erred in giving judgment for the defendants, with costs.

It is therefore ordered, adjudged and decreed, that the judgment be annulled, avoided and reversed, and this court proceeding to give such a judgment, as, in their opinion, ought to have been given below.

It is ordered, adjudged and decreed, that there be judgment
278 for the defendants.

(Endorsed:) No. 642. Sup. Court. State App'l't vs. Orleans
Nav'n Co. App'les. Op. 3 J.

279 (Note.)

The foregoing opinion, delivered by Justice Francis Xavier Martin, is reported in Martin's Reports, Volume No. 11, under the title State vs. New Orleans Navigation Company. The foregoing copy was made from the original decision of the organ of the Court and differs in some minor particulars from the printed decision. It is possible that Justice Martin revised his opinion. Because of the slight difference—some self explanatory and others correcting themselves—I take the liberty of suggesting that the two opinions be read together.

(PAUL E. MORTIMER, Clerk.)

280 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing Seventy-Three (73) pages contain a full, true and complete copy of the proceedings had in the First Judicial District Court, of the State of Louisiana, in a certain suit where The State of Louisiana was plaintiff, and The Orleans Navigation Company was defendant, which appeal is now on the files thereof under the Number 642; also certified copies of certain documents filed in the Supreme Court in connection with the above numbered and entitled suit; also a certified copy of the original opinion and judgment rendered by Mr. Justice Francis Xavier Martin, in the same case.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at the City of New Orleans, this 24th day of

January, Anno Domini, one thousand nine hundred and ten, and of the Independence of the United States of America, the one hundred and thirty-fourth.

[SEAL.]

(Signed) PAUL E. MORTIMER, *Clerk*.

281 *Proceedings Had in the Supreme Court of the State of Louisiana.*

Transcript of Appeal Filed.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION COMPANY; A. J. DAVIDSON, J. H. ELLIOTT, and HANS WIDMER, Liquidators Thereof.

Appeal from the Civil District Court, Parish of Orleans, Division "C," E. K. Skinner, Judge.

Filed April 8th, 1910.

(Signed)

PAUL E. MORTIMER, *Clerk*.

Answer to Appeal.

Supreme Court of Louisiana.

No. 18211.

STATE OF LOUISIANA

versus

THE CARONDELET CANAL & NAVIGATION CO.

Now comes A. J. Davidson, J. H. Elliott, and Hans Widmer, Liquidators of the Carondelet Canal & Navigation Company, and for answer to the Appeal of the State of Louisiana, pray this Court to amend the judgment below.

First. By striking out all that part of the opinion of the Court which holds that the State is entitled to take over without compensation such property as was held and owned by defendant Company up to March 10th, 1858, and that for the property acquired, and improvements made, subsequent to the passage of Act 74 of 1858, the Carondelet Canal & Navigation Company is entitled to compensation according to the award of the three commissioners provided for in that Act.

Second. To enter a judgment rejecting the demand of the State as made in the petition with reservation of its rights to take over the property and franchises of the Defendant on an award made by the three Commissioners provided for in said Act of 1858, and in all

other respects the Defendants pray that said judgment may be affirmed with costs.

282 (Signed) FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG,
(Signed) SAUNDERS, DUFOUR & DUFOUR,
(Signed) B. T. WALDO,
Att'ys Def'ts.

(Endorsed:) No. 18,211. Supreme Court State of Louisiana. State of Louisiana versus The Carondelet Canal & Navigation Co. Answer to appeal of State. Filed Ap'l 11, 1910. (Signed) Paul E. Mortimer, Clerk.

Motion—Agreement to Use Nos. 9766 and 10834.

In the Honorable the Supreme Court of the State of Louisiana.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION COMPANY; A. J. DAVIDSON, J. H. Elliott and Hans Widmer, Liquidators of the Carondelet Canal & Navigation* Company.

Now in this Honorable Court, through her Attorney General, Walter Guion, comes the State of Louisiana, plaintiff and appellant in the above numbered and entitled case, and gives this court to understand and be informed that your mover applied for and obtained a devolutive and a suspensive appeal to this Honorable Court, returnable on the 15th April, 1910, from a final judgment rendered by the Honorable the Civil District Court for the Parish of Orleans, Division "C," on the 28th March, 1910, in the suit entitled as above, and being No. 89,798 of the docket of said court, and that the Clerk of the Civil District Court for the parish of Orleans has delivered to your mover a transcript of appeal in said suit which your mover has filed in this Honorable Court under the No. — of the docket
283 thereof. That said Clerk of the Civil District Court, aforesaid, has omitted, in making up the transcript of appeal in said case, to copy into said transcript, and as a part thereof, the following papers and records which were offered in evidence by plaintiff on the trial of said suit in the Civil District Court, to-wit:

1st. Petition and answer in the suit entitled Henry Singer vs. Carondelet Canal & Navigation Company and Bertrand Saloy, No. 13,631 of the docket of said court, and

2nd. Record in the suit entitled Carondelet Canal & Navigation Company vs. City of New Orleans, No. 30,166 of the docket of said Court.

That the said Clerk of the Civil District Court for the Parish of Orleans has given as his reasons for not copying the same into said

transcript that it is not necessary for him to do so, under the 3rd subdivision of the eighth paragraph of Rule 1 of this Honorable Court giving to parties in interest the right, upon application to this Honorable Court, to use transcripts in this Honorable Court, and that both of said suits were appealed to this Honorable Court and are Nos. 9766 and 10,834, respectively, of the docket thereof.

That in view of the premises, Mover desires to be permitted to use the transcripts in said two suits being Nos. 9766 and 10,834 of the docket of this Honorable Court in lieu and stead of the records of the Civil District Court which were offered in evidence in that Court.

Wherefore, mover prays that the Honorable Court do permit and grant leave to mover, the State of Louisiana, to use the transcripts of appeal on file in this Honorable Court under the numbers 9766 and 10,834 in the place and stead of such portions of same as were offered in evidence in this suit in the trial thereof in the 284 Civil District Court and as have not been copied into the transcript herein by the Clerk of said Court.

And for all and general relief.

(Signed)

WALTER GUION,
Attorney General.

Of Counsel.

NEW ORLEANS, April 8th, 1910.

We, the undersigned attorneys of record of defendants, the Carondelet Canal & Navigation Company and A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators of the Carondelet Canal & Navigation Company, do hereby consent that the above motion on the part of the State of Louisiana be granted, and that the transcripts of appeal, in the two cases therein referred to, and being Nos. 9766 and 10834 of the docket of the Supreme Court, may be used by plaintiff and appellant in the place and stead of the evidence offered by plaintiff in the lower court and not copied into the transcript in this case by the Clerk of the Civil District Court for the Parish of Orleans.

(Signed)

FARRAR, JONAS, GOLDSBOROUGH
& GOLDBERG,

Att'ys Def't.

(Signed)

SAUNDERS, DUFOUR & DUFOUR.

(Signed)

BENJ. T. WALDO.

(Endorsed:) No. 18211. In the Honorable the Supreme Court of the State of Louisiana. State of Louisiana vs. Carondelet Canal & Navigation Co., A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators of the Carondelet Canal & Navigation Co. Motion and order and consent to use transcripts of appeal Nos. 9766 and 10834 in place and stead of such portions as were offered in Civil District Court on trial of above suit. Entered and Filed April 13th, 1910. (Signed) Paul E. Mortimer, Clerk.

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Order to Use Nos. 9766 and 10834.

(Extract from Minutes.)

NEW ORLEANS, *Wednesday, April 13th, 1910.*

The Court was duly opened pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION COMPANY, etc.

On motion of Walter Guion, Attorney General, and upon favorably considering the averments contained in his petition, and the agreement of opposing counsel, on file; It is ordered by the Court that mover is permitted and granted leave to use the transcripts of appeal on file in this Court under the numbers 9766 and 10834 in the place and stead of such portions of same as were offered in evidence in this suit in the trial thereof in the Civil District Court and as have not been copied into the transcript herein by the clerk of said Court.

Motion to Advance.

Supreme Court, State of Louisiana.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION CO., A. J. DAVIDSON, J. H. ELLIOTT and HANS WIDMER, Liquidators.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The joint petition of the State of Louisiana, appellant herein, and of the Carondelet Canal & Navigation Company, A. J. Davidson, J. H. Elliott and Hans Widmer, Appellees herein, with re-

286 spect represents;

That it is of great importance to the Appellant and to the Appellees, as well as to the people of the State of Louisiana, that the appeal herein taken by the State of Louisiana and now pending before this Honorable Court be argued and determined by this Court at the earliest possible moment;

That the issues involved in the cause are such as may require

legislative action by the Legislature of the State of Louisiana at its session beginning May 8th, 1910.

Wherefore, your petitioners pray that Your Honors may now advance for argument before this Honorable Court and for determination by the Court this cause so that it may be set down for hearing and argument for the week beginning Monday, May 23rd, 1910.

(Signed)

WALTER GUION,

Attorney General State of Louisiana,

(Signed)

E. H. FARRAR,

By W.

(Signed)

BENJ. T. WALDO,

(Signed)

W. C. DUFOUR,

Attorneys for Carondelet Canal & Navigation Company, A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators.

(Endorsed:) No. 18211. Supreme Court, State of Louisiana. State of Louisiana vs. Carondelet Canal & Navigation Co. et al. Petition for advancing case for hearing. Entered and Filed Apl. 16, 1910. (Signed) Paul E. Mortimer, Clerk.

Order to Advance.

Extract from Minutes.

NEW ORLEANS, *Saturday, April 16th, 1910.*

The Court was duly opened pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred 287 D. Land, Associate Justices.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION COMPANY et al.

The joint petition of Walter Guion, Attorney General of the State of Louisiana, representing the plaintiff State, appellant, and Edgar H. Farrar, Benjamin T. Waldo, and Wm. C. Dufour, Attorneys for the Carondelet Canal & Navigation Company, A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators, defendants, Appellees, and the averments contained in said petition on file, having been favorably considered: It is ordered by the Court that this cause be advanced on the docket of the Court and fixed for Monday, May 23rd, A. D. 1910.

Called, Argued and Submitted.

NEW ORLEANS, *Monday, May 23rd, 1910.*

The Court was duly opened pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice; and Francis T.

Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL AND NAVIGATION COMPANY, A. J. DAVIDSON,
J. H. ELLIOTT, and HANS WIDMER, Liquidators.

This cause came on this day to be heard and was argued by counsel: Walter Guion, Esq. Attorney General, opened for the State, plaintiff, appellant; Mr. E. H. Farrar, replied for the defendant, appellee; and Mr. Guion closed the argument. The Court then took the cause under advisement upon the briefs and papers now on file.

288

Final Judgment.

NEW ORLEANS, *Saturday, June 25th, 1910.*

The Court was duly opened pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

His Honor, Mr. Justice Monroe, pronounced the opinion and judgment of the Court in the following case:

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL AND NAVIGATION COMPANY, A. J. DAVIDSON,
J. H. ELLIOTT, and HANS WIDMER, Liquidators.

It is ordered, adjudged and decreed that the judgment appealed from be annulled, avoided and reversed and that there now be judgment in favor of the plaintiff, the State of Louisiana, and against the defendant, the Carondelet Canal and Navigation Company, in liquidation, herein represented by A. J. Davidson, J. H. Elliott and Hans Widmer, its liquidators, decreeing that the Carondelet Canal, Bayou St. John and Old Basin, together with all the property and improvements connected therewith or thereto appertaining or belonging, be delivered to, and into the possession and control of, said State of Louisiana, to be managed and administered by it, for the use of the public, through the Board of Control for the Bayou St. John and Carondelet Canal and Old Basin, appointed by the Governor, pursuant to the provisions of Act No. 161, of 1906, and that the same be so delivered, free from any obligation on the part of the State to pay or compensate the said defendant therefor, or for any part thereof.

It is further adjudged and decreed that said defendant and said liquidators render an accounting, showing their receipts and disbursements, in the management of the said property, since
289 March 10, 1908.

It is further decreed that this case be remanded to the District Court for further investigation, upon the lines indicated by the foregoing opinion, unto the question of the ownership of the \$3000.00, now on deposit in the Hibernia Bank & Trust Company; that the right of the plaintiff, to obtain judgment for such amount as may be found due upon defendants' accounting and to take such further proceedings and obtain such further orders as may be required for the execution of this judgment, be reserved.

It is further decreed that defendant pay all costs.

(His Honor, Mr. Justice Provosty, dissents to the extent of holding that the defendant is entitled to compensation for the cost of the enlargement and improvement of the canal, and of whatever additions it may have made to the property as it stood in 1858.)

Opinion.

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, *Saturday, June 25th, 1910.*

The Court was duly opened, pursuant to adjournment. Present Their Honors: Joseph A. Breaux, Chief Justice; Francis T. Nichols, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

His Honor, Mr. Justice Monroe, Pronounced the opinion and judgment of the Court in the following case:

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Supreme Court.

No. 18211.

STATE OF LOUISIANA

VS.

CARONDELET CANAL & NAVIGATION CO.

SATURDAY, *June 25th, 1910.*

Mr. Justice Monroe.

Appeal from the Civil District Court, Parish of Orleans, Skinner, J.

Statement of the Case.

The State alleges that it owns and is entitled to the possession of the Carondelet Canal and Bayou St. John and the Old Basin,

situated in the Parish of Orleans, together with all the property and improvements connected therewith or in any wise, thereto, belonging or appertaining; "that defendant has been in possession of said property for many years, under certain legislative grants, agreeably to which, its right to such possession has, long since, terminated, and that a Board of Control has been created which is ready to take possession, in its (the State's) behalf, but that defendant refuses to turn over the property; that, in 1904, the New Orleans Terminal Co. sought to expropriate, a piece of land, in the form of a triangle, on which defendant's office was situated, and an agreement was entered into, between the defendant, the said Terminal Company and your petitioner, represented by the Governor, subject to the approval of the General Assembly, whereby the Terminal Company was allowed to take the property, on paying \$3,000, which amount was to be deposited in bank to await the determination of the question, whether it should inure to petitioner or to defendant, and that, said agreement having been ratified (by Act 77 of 1905), said amount is now on deposit, accordingly. The prayer of the petition is, that defendant be cited, through its liquidators, and that there be judgment decreeing "that the Caron-

291 "delet Canal, the Bayou St. John and the Old Bason, together with all the property and improvements connected therewith or thereto pertaining and belonging, including "the aforesaid sum of \$3,000. * * * be delivered to * * * "petitioner, to be managed and administered by it for the use of "the public, through the Board of Control * * * appointed " * * * under the provisions of Act No. 161 of 1906, and that "the same be so delivered to your petitioner, free from any obligation on its part to pay or compensate" defendant, and that Act 74, of 1858, in so far as it may be regarded as requiring such compensation, be decreed void, as in violation of Articles 108 and 109, of the constitution of 1852, which prohibited the granting of State aid to corporations, save as therein provided; but, should the court conclude that some compensation is due defendant, that, petitioner be, nevertheless, put in possession of the property, leaving the adjustment of the amount for further consideration. Petitioner further prays that defendant be ordered to render an account of its management since October 17, 1907 (that being the date at which its right of possession is said to have terminated), and that it have judgment for such amount as may be found due.

Defendant, by way of exception, denied the authority of the Attorney General to bring the suit, and objected, that the State failed to set forth its title to the property claimed, which exceptions having been overruled, it answered, by giving, what purports to be, a history of the property claimed, from 1794 to the present time, including a résumé of a vast deal of legislation, territorial, state and federal, to which we will refer hereafter, and upon the basis of which, it alleges that the "State of Louisiana never, at any time, "claimed any right, title or ownership, in, or to, the Canal Caron-delet, and the improvements thereon, made by the Orleans Navigation Company, and its successors; and that, whatever rights the

292 "State has, in, and to, this property, are derived only from
 "the contract rights existing between the Carondelet Canal
 "and Navigation Co. and the State of Louisiana, as defined
 "by the Acts of 1857 and 1858, and * * * that said statutes * * *
 "constitute a contract between the State * * * and the * * *
 "Company, protected from impairment by the Constitution of the
 "United States, and that the State * * *, neither by suit nor
 "otherwise, can * * * take the property of the defendant in
 "the said Canal, Basin and Bayou St. John, without making, to
 "this defendant, the compensation agreed to be made in said con-
 "tracts. * * * And further answering, defendant avers that it
 "has always been ready and willing to comply with the provisions
 "of the charter of 1857, as amended by the charter of 1858, and is,
 "now, ready and willing to deliver the Canal Carondelet and the
 "basin and Bayou St. John, to the State of Louisiana, upon the
 "payment to it of the value of the property, as fixed by an award
 "of three commissioners; one, appointed by the Company, one, by
 "the Governor and one, by the Civil District Court for the Parish
 "of Orleans; and that, until this award is made and the amount
 "thereof paid, it has the right to hold and enjoy the said property.
 "Further answering, defendant avers that the triangle
 "mentioned in the plaintiff's petition, as having been sold, with
 "reservation of the rights of the State, to the New Orleans Ter-
 "minal Co., and the proceeds thereof (was and are) * * * part
 "of its private property, not connected with, or making part, in
 "any respect of the said canal."

From the evidence to which we are referred, we gather the following facts:

As originally laid off, the City of New Orleans appears to have
 extended up and down the river for a distance of something less
 than a mile and to have extended back from the river for about
 half a mile. It was some six miles from the lake, which lies off to
 the north, and was separated therefrom by a swamp. In 1794, and
 before that time, the Bayou St. John flowed through the swamp,
 at a distance of say a mile and a half to to the north-
 293 westward of the City ramparts in the direction of the lake,
 into which it emptied its waters, and the, then Spanish Gov-
 ernor, the Baron de Carondelet, caused a canal (since, known as the
 Canal Carondelet) to be excavated, from the Bayou, with which it
 was connected, to a point just in the rear of the ramparts. Some
 years later, after the purchase of Louisiana by the United States,
 the Legislative Council of the Territory of Orleans, at its second
 session, established a corporation, with perpetual succession, called
 "the Orleans Navigation Co.," for the purpose of improving the in-
 land navigation of the territory, and conferred upon it, and its offi-
 cers, the right to enter upon all "lands covered with water," with a
 view of laying out navigable canals, and to purchase, or expropriate,
 so much thereof as they might deem necessary for the purposes of
 such canals. The act seems to have been somewhat mutilated in
 the passage, for, without any previous mention of the Bayou St.

John or the Canal Carondelet, the 9th section reads, in part, as follows:

"SEC. 9. * * *. That, as soon as the said Company shall have improved the navigation of Bayou St. John so as to admit, at low tide, vessels drawing three feet of water, from Lake Pontchartrain, to the bridge at the settlement of the Bayou, the said president and directors shall be entitled to ask * * * from every vessel passing in or out * * * a sum not exceeding one dollar for every ton" etc.; and the tolls were to be increased as the vessels drawing three feet were enabled to reach the basin, which was situated at the head of the Canal, as then, constructed; further increased as they were enabled to get within, say, 100 yards of the river; and still further increased when they were enabled to reach the river. Section 13 of the act authorized the Company to construct roads, of shells, sand or other hard material, on either side of the Bayou and to charge tolls for the use of the same, and the last 294 (17th) section provided that the operations of the Company should, be confined "in the first instance," to the improvement of the inland navigation of the county of Orleans and of Bayou Plaquemine." Acts 1805, Ch. 1. In 1809, the Council passed an act providing; "that the improvements of the Orleans Navigation Company shall not extend to the Bayou Plaquemine" (Acts of 1809, ch. XXII, p. 56); and, in 1814, passed another act, confining the operations of the company "to the island of Orleans." (Acts of 1814, p. 46.) In the meanwhile, in 1811, a litigation had arisen between the Company and the City of New Orleans upon the subject of the right of the latter to continue using the canal for drainage purposes, and the opinions of the three judges of the Superior Court of the Territory in which the matter was finally decided, as also the arguments of the Counsel, throw a good deal of light upon the subject of the status of the canal and bayou and of the relation of the company thereto. The first report of the case (Orleans Nav. Co. vs. Mayer & Co., 1 M., 269), contains the following, among other, statements:

"This was an action brought to try the right of the corporation of the City of New Orleans to drain the waters of the city into the Bayou St. John, through the Canal Carondelet. * * *. The Navigation Company considered the canal as one of the navigable waters which their charter authorizes them to occupy and improve, under the idea that, whatever may have been the original destination of the Canal, its last and permanent one was to be exclusively applied to the purpose of navigation."

Mr. Livingston, representing the Company, by way of argument, said:

"The publications of the 'Moniteur' (referring to publications by which the, then, contemplated project of excavating the canal was announced, and which were accepted as coming from the Baron de Carondelet) 'clearly show that the primary object of the canal was navigation, altho, at first and until this end 295 'could be attained, another was held out as an inducement to the people to send their negroes, the draining of the

"stagnating water from the back of the City. Both the objects could not be simultaneous, for one would necessarily prevent the other. The draining the waters and carrying off all the filth of the City into the canal must, in a very short time, fill it up and render it absolutely unfit for navigation. The paragraphs in the *Moniteur*, which are believed to *to* be official, convey ideas that repel the presumption that the canal was intended to be a receptacle for the filth of the city. They speak of double rows of trees, affording an agreeable walk; of the satisfaction the people will have in beautiful shaded walks on each side of the canal. * * * There was, then, a time when the destination of the canal was to be altered, and, instead of being a canal d'égoutement, it was to become a canal of navigation." Mr. Moreau, on the other hand, said: "The Canal Carondelet was dug at the expense of the inhabitants of New Orleans, with the aid of the chain negroes, granted to them by the King, on the representation of the governor, whose name it bears; and we are informed, from high authority, that, if the expenses of the war had not forbidden it, an aid would have been obtained from the treasury. The papers in evidence clearly establish the proposition that the canal was built at the expense of the inhabitants, who spared their negroes, aided by the King's grant of the chain negroes, at the instance, and solicitation of his representative in the province.

"It was dug for a particular purpose, that of ridding the City of stagnating ponds which contributed to its sickness and the vast quantity of mosquitoes that rendered it unpleasant in summer, and the idea was held out that, in successive years, it might be changed into a canal for the navigation of schooners. Surely, the City, from the moment the canal was dug, rightfully claimed the use of this canal, which it had acquired, partly for a valuable

"and partly for a good consideration."

296 Judge Lewis and Judge Martin sitting together, the former was of opinion that the case was with the company, and the latter, that it was with the defendant, and there was no decision. It was, then, reargued (see 2 M. p. 10), and three paragraphs from the *Moniteur*, a paper admitted to have been "printed under the eye of the Baron de Carondelet", and "allowed to be official" were read in evidence. The first paragraph announces the project of a canal which will carry the stagnant waters into the Bayou St. John; states that, the war precluding the hope of aid from the royal treasury, the Government (of the province) had only asked permission to use convict labor, whereby, "and the help of zealous inhabitants, to cut a drain, which, in successive years, will be changed into a canal for the navigation of schooners"; announces that, permission to use the convicts having been obtained, the Government would ask the inhabitants of the city for the use of their negroes; and, finally, refers to two large banquettes, which, when planted with rows of trees, "will afford an agreeable promenade". The second paragraph (published in Oct. 1795) refers to the future greatness of the City, its increasing commerce, and the necessity of opening communication with the sea, through the lakes, presses the "commis-

saries" to prevail on the citizens to continue their aid; expresses the hope of the Baron that, if the planters also assist, schooners will soon be able to come to the city; announces that a draw bridge is to be built over the Bayou, at the expense of the City, and, again mentions the projected promenade. The third paragraph, (published in Nov. 1795) notices the completion of the "canal of the City" as far as the Bayou, with a width of 15 feet, and mentions that it is being deepened so as to enable schooners to come to the City. The Court (Judge Lewis, with Judge Matthews concurring) held that the canal was made for the two fold purpose of drainage and navigation; that

the use which the city had of it was, merely a "permissive
297 right, allowed by the Sovereign, on account of that portion
of labor furnished by the inhabitants "of the city and coun-
try more immediately interested in its health and prosperity; and
that its further use, for drainage was no longer compatible with its
use for navigation. The matter did not, however, end there, for
Judge Martin wrote a strong dissenting opinion, in which, among
other things, he said:

"The plaintiffs in this case are mere donees, or volunteers. They
"have paid no consideration. The defendants, on the contrary if
"the judgment be against them, lose the whole labor and expense of
"digging the canal. I say, the whole, because three fourths of the
"canal were dug by the personal labor of some of the inhabitants of
"the city and neighboring planters—the labor of their negroes and
"with the money of others—and the other fourth, by the labor of
"the convicts which the Sovereign bestowed, as a favor. So says
"the Baron. Now, the right of the City, in this last fourth, is as
"strong as in the other three. Surely, the Sovereign, having be-
"stowed this gift, favor, or grace, could not fairly recall it. Altho
"the City did not make any advances, from the corporate chest, yet
"her rights are the same; for, the canal was dug to avoid an expense
"the city would have been compelled to undergo, if her adminis-
"trators respected the health and lives of her inhabitants. The
"very persons who furnished the aid, directly, would have been,
"necessarily, called upon to enable the corporate chest to perform the
"work. If a drain is now to be dug by the City, such of those per-
"sons who are still living, and the descendants of the others, must
"put their hands into their pockets, to do, once more, that which has
"already been done". (2 M. p. 43).

And, as the law (act of 1811, Ch. 6) required that a rehearing
should be granted in all cases in which the Court was divided, there
was a re-argument, upon which, there was a final decision (2 M.
214), rendered by Judge Matthews, who held; "that the primary
object and ultimate end of all concerned in it was *it to make*
298 a canal of navigation; "that it "could not answer the two-
fold use of a common sewer to the city and a navigable
canal"; that there was no contract vesting in the city the right
claimed by it, (i. e. to drain into the canal). The case appears to
have been pending from the spring term of 1811 to the spring term
of 1812, and, in the meanwhile, to-wit; on July 8, 1811, there was
passed a notarial act, upon which the defendant now before the court
seems to rely, as showing title, in it, to some part of the property

which is included in the present claim of the State, and which reads, in part, as follows (quoting from a translation which, with the French original, we find in the transcript): "Before us, Notary Public * * *, appeared Mr. F. J. Le Breton Dorgenois, Chew & Relf, under a power of attorney, from Mr. Daniel Clark; Domingo Fleitas; Dame Louise de la Ronde, widow Castillon; and the free negress, Marie, represented by the said Mr. Le Breton Dorgenois; all, "owners of lands on the Bayou St. John, situated on the banks, "and across the Canal Carondelet, and declared to me, by these "presents, that they have given and granted in perpetuity, to the "Company of Navigation, of New Orleans * * *, the full and "entire power to enlarge the Canal Carondelet up to 25 feet, and to "take, besides, on their property, on each side, a road 60 feet in "width, inasmuch as the said Navigation Company, for indemnity "of said gift * * *, accords to them, as well as to their heirs "and assigns, and forever" (the right) "to drain their waters into "said Canal Carondelet, by the ditches which they shall be able to "conduct to it, and, there, navigate, to reach their habitations in "the City, so that no one, whosoever, by orders of the board of "directors, can exact from them any payment, in this regard, at any "time * * *, it being well understood that the above said land, "transferred both for the enlargement of the canal, and road, to be "established on the right and on the left of said canal, shall not be "used for other purposes than those stipulated in the present act."

299 We find in the record, as offered by defendant, a blue print, of what purports to have been, a survey, made in 1871-2, "under contracts of W. R. Ross and V. Sulakowski," upon which appears the names of F. J. Le Breton Dorgenois, Daniel Clark and Jean Baptiste Castillon, as the owners of certain tracts of land upon either side of the Canal Carondelet; and defendant has also offered excerpts from the American State Papers, showing confirmation of the grants to the parties above named, and to Charles Griffon, in which, the lands granted are, respectively described as follows:

"No. 376. Francis J. Le Breton Dorgenois claims a tract of land "situated in the county of Orleans, on the left side of the Bayou St. "John Road, containing two arpents in front and extending back "as far as within 60 feet of the Canal Carondelet, and bounded by "the lands of Domingo Fleitas and Daniel Clark."

* * * * *

"No. 126. Daniel Clark claims a tract of land, situate near the "City of New Orleans, containing 12 arpents in front, on the road "leading to Bayou St. John, and varying in depth; bounded, on the "north, by the road aforesaid; on the south, by the Canal Caron- "delet; on the east, by the land of Joseph Suarez; and on the west, "by the lands of Louis Blanc and the Bayou St. John aforesaid".

* * * * *

"No. 308. Jean Baptiste Castillon claims the following tracts of land situate in the county of Orleans, viz:

"8th. A tract situate on the left side of the Bayou St. John road, "in going from the City, containing 6 arpents in front, and extend-

"ing back to the lands of Jean Gravier, and bounded, on one side, by the lands of Mr. Griffon, and on the other, by the lands of Mr. Castenado.

"9th. A tract of land situate on the Bayou St. John, containing 788 superficial arpents and bounded, on one side, by the lands of Mr. Beveiniseaux, and on the other, by the lands of "Metairie".

* * * * *

"No. 151. Domingo Fleitas claims a tract of land, situate in the county of Orleans, at a distance of a mile from the City of New Orleans, containing 53 toises and one foot, in front, on said road, and extending back as far as the land of Gravier, but varying in its width towards the rear, and bounded, on the east, by the land of Madame Bertrand and vacant lands, and on the west, by land of Joseph Suarez and vacant lands."

(The title to the land thus described was, however, confirmed only as to "that part of this land, viz; the front, and depth as far back as the letters A. B. on the plat executed by Charles Trudeau, late Surveyor General, dated May 9, 1801", the claim, as to the rest, having been rejected).

"No. 351. Charles Griffon claims a tract of land, situate in the county of Orleans, on the south side of Bayou St. John road, at a distance of about ten arpents from the City of New Orleans, containing two arpents in front, and extending, in the depth, as far as the lands of John Gravier, and bounded on the north west by lands of J. B. Castillon, and, on the south east, by those of Claude Tremé and by lands claimed by the City as commons".

The conveyance from the heirs of Griffon to the Orleans Nav. Co. was made on Jan. 16, 1828, the consideration, recited in the act, being \$1000, and the property conveyed being described as:

"All their right, title and claim which they or either of them have, has, or might have, or pretend, to a certain tract, or a piece of land, situated and lying on both sides of the Canal Carondelet and bounded, on the south, or the side next to the City and basin, by the lands granted to General Lafayette, and, on the north, or the side next to the Bayou St. John, by the lands of M. Pontalba, the said tract, or piece, of land extending 60 feet from the bank, or border, of the said Canal, being the width of the roads on each side thereof. Making, together with the lands over which the said canal runs, and which is 30 feet wide, a total breadth of 150 feet, and extending along the said Canal, on both sides thereof, and parallel, or nearly parallel, thereto, 395 feet, be the same more or less, the whole, conformable to the plan annexed to this act. * * *. And it is hereby declared and agreed by and between all the said parties hereto that the said tract or piece, of land is hereby conveyed and sold by the said vendors and purchased by the said Company for the express purpose, following, viz: that so much of the said tract, or piece of land, herein and hereby conveyed, as lies on each side of the said canal shall be, and is, hereby, covenanted to be used, forever, hereafter, as a public highway or road."

There is, also, in evidence a copy of, or an excerpt from, the report

of E. D. Saunders, Special Master, filed July 13, 1904, in the suit of George E. Wheelock et als. vs. St. Louis and San Francisco R. R. Co. et als., then, pending in the Circuit Court of the United States for this district, which appears to have been an action brought by the minority stockholders of the Carondelet Canal & Navigation Co. (defendant herein) in which they complained that the majority stockholders, being, also, interested in the St. Louis & San Francisco R. Co., were preferring the interests of the Railroad Company to that of the Canal Company, in the matter of a certain proceeding, by the Railroad Company, to expropriate certain property appurtenant to the Carondelet Canal.

The report sustained the position of the majority stockholders of the Canal Co., with which their present position (as we assume that though the Company, by reason of the expiration of its charter, is in process of liquidation, the owners of the assets are those who owned the stock) is entirely at variance, and we make the following excerpts therefrom, as being both interesting and valuable, in connection with the questions now under consideration, to-wit:

302 "Built thus at the general charge, through public lands
"and for public purposes, the canal was, beyond any controversy, originally, public property.

* * * * *

"It would seem that the Baron de Carondelet, by some instrument which no longer exists and the exact terms of which have not been preserved, reserved, over the public domain, a strip of land, from what is now the Old Basin to Bayou St. John, for a canal and for streets or roads along the canal. The evidence in the case above cited (Orleans Navigation Co. vs. Mayor, 1 M., 274) speaks of 30 feet, as the intended width of the canal, and also speaks of public roads, or promenades, being reserved along the canal. But the width of these roads is not mentioned. The defendant has offered in evidence copies of old deeds, grants and confirmations of title, to lands bounded by the canal reservation, which show that, at various points, on both sides of the canal, the width of the strip reserved for a road, on each side, is always stated, or assumed to be, 60 feet, from the waters' edge. Thus: the confirmation by the Land Commissioner of the claim of F. G. L. Dorgenois, under occupation in 1803, (Am. St. Papers, Vol. 11, p. 283) describes the tract confirmed as one fronting on the Bayou St. John road and extending back as far as within 60 feet of the Canal Carondelet. This would tend to show that, probably, in 1803, the roadway reserved along the canal was recognized as having a width of 60 feet. Again: in the suit of Fleitas vs. Mayor, 1 M. (N. S.) 420, decided in 1823, the Court says: "The petitioners claim title to a tract of land, in the rear of the City of New Orleans, containing two acres front, on the space of 60 feet, reserved on the Canal Carondelet, by 18 in depth, by virtue of a grant to Carlos Guardiola, dated May 20, 1800. This claim was sustained by the court, thus recognizing a grant by the Spanish government, in 1800, in which the width of the reserved roadway is stated to be 60 feet.

303 "On Feb. 23, 1820, the City purchased from B. Meacrt y a tract of land containing a little over 8 arpents and fronting on the road along the Canal Carondelet. The description reads: "Une portion de terre situee sur le bord du Canal Carondelet, et a la distance de 619 toises de l'alignement sud, est la rue Bassin, la dite portion mesurant 90 toises de face sur le chemin (qui) est 60 pieds de large dans toute la longueur."

"The relative "qui" was evidently omitted through inadvertance in the above passage. Attached to the deed is a map which shows the line of the road, running parallel to the canal, from the Old Basin to the tract sold—nearly 1300 yards. The scale on this map bears out the statement that the roadway along the Canal is 60 feet wide in its entire length. The defendants have offered in evidence a copy of the patent by the Spanish Government to Charles Guardiola, of date May 20, 1801, in which the tract conveyed is described as bounded by the reserved road, 60 feet wide, on the bank of the Canal Carondelet (indando este pano de tierra con el camino reservado de sesenta pies de ancho a la orilla del Canal Carondelet). Assuming, from the foregoing references, that the width of the canal was intended to be 30 feet and the width of the roadway was intended to be 60 feet, French measure, we should expect to find the property lines, parallel to the canal, 150 feet, French measure, apart. A number of them offered in evidence by defendants, show, by the scales on them, that the distance between the property lines has always been regarded as 150 feet, French measure. Map of Joseph Pilie, City Surveyor, dated Jan. 25th, 1826; plan of Surgi, deposited with O. H. Perry, N. P. on April 20, 1850; plan of Joseph Pilie, April 14th, 1829. The City has widened the street, on the south side, for some distance, and, allowing for this increased width, the original distance between the property lines would be, approximately, 150 feet, French measure.

304 " * * * Another reason for believing that the width of the roadway along the canal was 60 feet, is, that the Act of Congress of March 3rd, 1807, confirming the claims of New Orleans to certain commons, makes it a condition of the confirmation that the City shall reserve, from the lands so confirmed, a strip, for the continuation of the canal from the old basin to the river, and shall reserve a public highway, on each side, of the continued canal, the width of the highways reserved in this Act of Congress was, no doubt, the same as that of the highways bordering on the canal, up to the Basin. Accordingly, I find: (a) That the exact terms of the order of the Baron de Carondelet, dedicating or reserving, a strip of land for the canal, from the old Basin to Bayou St. John, are not known.

" (b) That it seems morally certain, from the references in old deeds, grants, old maps, decisions and confirmations, that the reservation was: (1) thirty (30) feet for the canal; (2) sixty (60) feet, on each side, for a public road.

" (c) That the said strip of 150 feet was reserved on public lands and for public purposes and was public property."

From a synopsis of the findings of the Special Master, upon the whole case, we make the following excerpts:

"1. The Complainant is a shareholder of the Carondelet Canal & Navigation Co. 2. The several natural persons named as defendants in the bill are officers and directors of that company. 3. "The capital stock of the company is, apparently, composed of 2140 shares. On December 31st, 1902, Mr. L. S. Berg purchased, from Dr. George K. Pratt, for \$75,000, cash, 1183 shares, being a majority of the stock of said company. This stock still stands in the name of L. S. Berg, or B. F. Yoakum, but the money to purchase it with was furnished by B. F. Yoakum, then, president of the St. Louis & San Francisco Railroad Company, and Mr. Berg swears "that he believes that "the equitable interest" in said stock 305 "is in the St. Louis & San Francisco Railroad Company, and, "I, therefore, find that said Company is the real owner of "said stock. * * *

"Mr. L. S. Berg is the president of the New Orleans Terminal Company, which is owned by the St. Louis and San Francisco Railroad Company and by the Southern Railway Company. * * *

* * * * *

"4. The St. Louis & San Francisco Railroad Company and the Southern Railway Company own the New Orleans Terminal Company, and the City of New Orleans * * * granted the last named company a right of entrance into the city, through Toulouse street, or Carondelet Walk, the Street adjacent and parallel to the canal, on the south side. 5. I find, and the defendants all admit, that, when the Railroad Companies had purchased a majority of the stock of the Canal Company and had, then, elected a board of directors, consisting of such persons as they saw fit to nominate and elect, the Board of directors, so elected, owed it to the minority to act with scrupulous care to assert all the rights of the Canal Company, as against the Railroad Company, in respect to the Streets in which both companies had, or asserted they had, rights. And the action of the Board in respect of such, possibly, conflicting rights, must be closely scrutinized. But this duty of the Board did not render it obligatory upon said Board to assert rights which the minority believed the Canal Company had, but, which that Company did not, in fact, have. The test of the good faith and diligence of the Board in the discharge of its duties is furnished by the charter and not by the beliefs of the minority. And the Board would not have been justified in engaging in litigation to assert rights for the Canal Company which it was not really entitled to. * * * 6. The Carondelet Canal & Navigation Company does not own, and has no right of control over, the streets which adjoin, and run parallel to, the canal. 7. 306 "The charter of said Canal Company expires on March 10th, 1908. 8. Under its charter provisions, the only rights granted to the Canal Company, with respect to the streets adjoining and parallel to the canal, were: (1) To take ground therein for layouts, half moons and basins when needed for the commerce of the canal; (2) To build a railroad therein. * * * 13. I find

"that the charge that the Board of Directors contrived and intended "to sacrifice valuable rights of the Canal Company to the Railroad Companies is not proven. The Directors have sworn that they acted in good faith and I have no doubt that they did. The charge is based principally on the supposition, positively averred, as a fact, in the bill, that the Canal Company owned the streets along the canal or had valuable and exclusive rights therein. I think that the Directors have taken the correct view of the nature and extent of the rights of the Canal Company and that the Canal Company would have gained nothing, and will, now, gain nothing, by asserting that it had such rights as the bill herein avers it has."

In addition to the view thus presented, it may be added that the maps of the City of New Orleans show that the Canal Carondelet is bordered by public streets and the decisions of this Court show that, almost from time immemorial, the City of New Orleans has exercised jurisdiction over those streets, as over any other streets within its limits. Thus, in "*Cronan vs. Municipality No. 1*," 5 A. 537 (decided in 1850) the Municipality was sued for the paving of Carondelet Walk and set up that the Navigation Company was liable for part of the cost, as the owner of property fronting on the street paved, all of which the Company denied. The Court found that the question of the Company's ownership was expressly put at

issue and that there was no evidence in support of the alle-

gations on that subject. The demand against the Company was, therefore, rejected. In "*Municipality No. 1 vs. Kirk*," 5

A. 34, it appeared that the defendant had been fined for landing a mast on the northeast side of the canal, in violation of an ordinance assigning the south west side for the landing of such articles, and that he set up the paramount right of the Canal Company to control the question, by virtue of its title to the property. The Court said that the proof of ownership was insufficient but would not decide that question in the absence of the company and affirmed the judgment imposing the fine, on the grounds, that the power to regulate the public highways was unquestionably vested in the Municipality and the ordinance was not unconstitutional or illegal on its face. In 1821, the General Assembly adopted a resolution directing the Attorney General to proceed by scire facias, to inquire as to the validity of the charter of the Orleans Navigation Co., and, whether, if constitutional, it had not been forfeited "by reason of the nonfeasance and malfeasance and the illegal and oppressive acting and doings of said company" (See Acts of 1821, p. 132), and the proceeding was instituted, accordingly, and the result (a judgment for the defendant company), together with the arguments on behalf of the State and of the defendant are duly reported. *State vs. Orleans Nav. Co.* 11 M. 36, 309.

The learned counsel for the defendant, in the course of his argument (in the case cited) said (p. 143):

"The adverse party insists that the Bayou St. John is public property, free and common, as a public highway for the use of all the people of the United States; and that, by this charter, it has been alienated in favor of the defendants, in violation of the

"constitution and of all public rights. No such alienation of that stream, or of the use of it, has been made. It is still, and ever has been since the Company has had the charge of improving it, a public highway, free for the use of all the citizens of the United States.

308 In deciding the case, Judge Martin met the contention of the State, that the right, granted to the Company to exact tolls for the navigation of the Bayou St. John, was unconstitutional and illegal, in part by saying:

"The act of 1805" (referring to the act of Congress) "extends with some modification, the ordinance of 1787, to the territory of Orleans. One of the provisions of the instrument is, 'that all of the navigable waters leading into the St. Lawrence and the Mississippi, and the carrying places between the same, shall be common highways, and forever, free, as well to the inhabitants of the territory as the citizens of the United States, or those of any other state that may be admitted into the confederacy, without any import tax or duty therefor.' The Counsel for the defendant has shown that neither the character of the public highway, nor its freedom, is incompatible with its subjection to some rule. Freedom does not preclude the idea of subjection to law. Indeed, it presupposes the existence of some legislative provision, the observance of which insures freedom to us by securing the like observance from others. * * * The freedom stipulated for by the ordinance is not so absolute as to be inconsistent with submission to ferriage laws. * * * Nor with quarantine laws. * * * Nor with submission to pilotage laws. * * * Nor, with submission to a law which provides a compensation for the labor and expense, bestowed by an individual or corporation on the improvement of the navigation of a water course, attended, before, with difficulty and danger, to be paid by those, who, by such means, navigate it with ease and safety * * * It does not appear to us that there has been any alienation of the soil, nor, that the bayou has ceased to be a public highway."

In the course of the trial of the case thus referred to a good deal of testimony was taken with regard to the navigability of the bayou, and the witnesses, generally testified that, prior to the taking charge

309 by the Orleans Navigation Co. there had been a bar off the mouth of the bayou, and another within the bayou, near the entrance thereto of a mill race; that on the (outside) bar, there was, at low tide, not more than from 8 to 18 inches of water, with from 4 to 4½ feet, at high tide; that the condition depended upon the direction of the wind; that vessels were sometimes delayed for days, and even weeks; that it was quite common for them to lighter their cargoes over the (outside) bar; that there were persons at Fort St. John who kept flat boats for hire, for that service; and, that, upon occasions, cargoes were jettisoned. In other words, that the navigation was accompanied with difficulties and, at times, with danger. With all that however it was admitted that commerce was, and had always been carried on, and there were at all times, from 30 to 50 schooners and smaller craft running in and out of the

bayou, from, and to, the north side of the lake, Bay St. Louis, Mobile, Pensacola, Appalachicola, and other ports and places. Counsel for defendant says, in their brief: "The Bayou St. John was, at that time" (when the Baron de Carondelet caused the canal to be dug) "a non-navigable stream, except for skiffs and pirogues", and he mentions the names of some of the witnesses, to whose testimony we have referred, as supporting that statement. Bearing in mind that the testimony was given in 1821, we shall consider it somewhat more particularly. Jose Pycharac (bridge keeper for the company) testified that he lived in the country for 40 years; that, during the Spanish regime he was employed as a pilot for the King, on the waters of the Bayou St. John and the lakes." He, then, testifies as to the difficulties of navigation and, giving the bayou a rather bad name, says that the condition was unimproved until the Navigation Co. took charge. On cross-examination, he says: "In the Spanish time, deponent, himself, and other schooners (?) sailed up to "Carondelet's basin, but with much labor. There might be about 50

310 "vessels, including the trade of Pensacola, coming into the bayou, and none of them above the burden of 20 tons, and they all were obliged to unload, even to their cables and anchors, as well to pass the bar as to pass Maxent's canal, and hardly one, in the course of a year, could reach the bridge without unloading, then, only in extraordinary times. Defendant often saw, in the Spanish time, many sail vessels moored at the bridge at the same time. The expedition against Bowles was composed of vessels, navigating on the bayou, which carried the troops and were joined on the lakes and off Pensacola by the armed vessels * * * They all took in the troops and provisions at the bridge. * * * Principal re-examination resumed: "At the time of the taking possession of the country by the Americans, none of the bayou sail vessels could ascend the Canal Carondelet."

Paul Lanusse, who had been employed by the Company, testified that, in 1796, the bayou was "not greatly navigable;" that there were some small vessels at the basin, but, in general, vessels were compelled to unload before crossing the bar; but, when the Americans took possession the canal and bayou could not be navigated by large vessels.

On cross examination, he admitted that he had seen schooners at the bridge in 1804 and 1805, but said that, in general, only small schooners were navigating the bayou at that time.

Louis Blanc testified to having difficulty in getting his schooners out of the bayou; said that he kept a flat at the bayou for the purpose of saving charges. He admitted that he saw small vessels at the bridge in 1804 and in 1805, "but not so many as at present;" "there were vessels which traded to Mobile, Bay St. Louis, Pensacola, Appalachicola, and the other side of the lake, but these were few in number."

Louis Allard testified that, in 1800, "the navigation of the bayou was very much obstructed, by chicot, on which vessels often remained stuck fast, and was also often obstructed by fallen trees.

" * * * That, in the ordinary times of low water there was about
 "two feet and a half on this last "(outside)" "bar."

311 "Being asked" (on cross examination) "if, at the forma-
 "tion of the Navigation Co., there were not a great many
 "schooners which traded to the Bayou St. John, from the other side
 "of the lake and from other places, witness says that there were, that
 "almost all the planters on the opposite side of the lake, each, had
 "a schooner, and they had no other means of communicating with
 "New Orleans and disposing of their produce. Witness thinks that
 "the whole number of vessels trading at this time" (referring to
 "the time mentioned in the question) "to the Bayou St. John, from
 "Pensacola, Bay St. Louis and the opposite side of the lake, might
 "be 35 including five or six oyster boats; that the whole of these
 "vessels generally loaded at the bayou bridge, or near it; that wit-
 "ness thinks that, at that period, there might be a vessel trading
 "to the bayou of the size of 30 tons, but this was a rare occurrence,
 "and a vessel of 20 to 25 tons was, at that time, esteemed a large
 "vessel; that, at this period, vessels were constructed with flat bot-
 "toms, to draw little water; that, at this time vessels of the size
 "usually navigating the bayou, and belonging to the King of Spain,
 "arrived at the bayou bridge; witness knows that one vessel was
 "built at the Bayou Bridge, before the establishment of the Nav-
 "igation Company and others repaired and fitted out."

Guillaume Benite, "commanded a vessel on the bayou, for six
 "years, about 37 years ago * * * ; up to the period of the estab-
 "lishment of the Navigation Co., the navigation * * * was in a
 "melancholy state, and not at all so navigable as at present * * *
 "that at the time of the cession * * * the Canal Car-
 "ondelet was not at all navigable, even for pirogues,"
 "etc. On cross examination: "That the vessel formerly employed
 "by M. Rillieux carried 200 barrels; that, in the year 1805, there
 "might be about 20 vessels employed in the trade, on the lake and
 "to Mobile and to other places, that the whole of those vessels,
 312 "when the water allowed them, discharged at the Bayou
 "Bridge; that some were obliged to remain outside the bayou
 "bar and discharge their cargoes."

"James Pitot arrived in this country about 25 years before testi-
 "fying; was the first president of the Navigation Company; came
 "from Pensacola in a vessel of 18 to 20 tons; arrived off the mouth
 "of the bayou and could not cross the bar; was landed in a pirogue.
 "On cross examination: "Witness being asked whether, before the
 "establishment of the company, vessels did not trade from the
 "Bayou St. John, says that he has seen vessels at the Bayou Bridge;
 "those vessels, when they could get over the obstruction to the
 "navigation, went up to the bridge and unloaded. Witness supposes
 "there were other vessels, besides the one freighted by him, trading
 "from Pensacola to the bayou."

Joseph Ravassa, in employ of the Navigation Co., testified that
 "the condition of the bayou was bad, before the Company was es-
 "tablished; "that vessels employed in the navigation of the bayou,
 "were at this time, (meaning that time) "obliged to hire chalons

"(flats, or lighters), almost every trip. "On cross examination he said: "that rigged vessels came and anchored at the Bayou St. John, previous to the cession of this country to the United States. Witness supposes that those vessels might be from 20 to 30 in numbers * * * ; that, in high water, all the vessels came up to the bridge and unloaded their cargoes, and, in low water, after unloading into the chalons and taking it in again, then after passing more the last bar, took it in again and unloaded at the bridge; that, for one that passed, without unloading before arriving at the bridge, three had to unload, before arriving at the bridge."

J. H. Holland testified that, in 1802, the condition of the bayou was bad; "that witness is satisfied that, from the state in which the

"navigation of the bayou, and canal are, now, as compared

313 "with what they formerly were, it would cost more to navigate it, formerly, (that is to say, before the improvements

"made by the Navigation Company) than it would do, at present, paying the tolls of the company, and, this, besides the risk of

"lives." On cross examination: "That, previous to the year 1805,

"there were several vessels as large as that of M. V. Rillieux, but she was one of the largest; that there was a vessel still larger, be-

"longing to Mr. Parent, which witness has known to lie there three

"weeks before it could cross the bar; that the number of vessels,

"at this time" (meaning that time) "employed in the trade of the

"bayou was from 40 to 50, of which, about ten belonged to the

"lake and the remainder to Mobile, Pensacola and other ports."

All the witnesses above mentioned testified on behalf of the Navigation Co. Those who were called by the State were as follows:

Vincent Rilleux testified that the bayou and canal were navigable

during the Spanish regime and also under the French; "that,

"during this period, a schooner, belonging to the father of the

"witness, drawing three and a half feet of water, traded from the

"lake to the basin; witness thinks this schooner traded 'til the year

"1802, or 1803; witness knows that 'til the year 1806, the same

"schooner, when the water was high, could approach to within a

"little distance of the basin, to the half moon, there * * * ;

"that, previous to the erection of the Navigation Company, a con-

"siderable commerce was carried on, by way of the bayou and

"canal, with Pensacola, Bay St. Louis, Appalachicola and the other

"side of the lake, and a considerable number of vessels, chiefly

"schooners (were employed in the trade."

Alexis Rochou testified that during the Spanish regime, in ordi-

"nary tides, the depth of water" (on the bar) "was three feet, and

"in extraordinary, three and a half; that witness was employed

"thirteen months, during the above period, in a schooner

314 "belonging to Mr. Bonabel; that he traded in the lake and

"canal; that the schooner drew five feet water, when loaded,

"and two and a half, when in ballast; that, in high water, the

"schooner could pass from the lake into the bayou, but, at low

"water, they were obliged to unload her before she could enter.

"On cross examination: "That the depth of the water on the bar,

"formerly, was, at the lowest tides, one foot and a half; that loaded

"vessels were frequently required to unload their cargoes on the outside of the bar, in order to pass it; that, at this time a Mr. Periquet, then commandant at the fort, and a Mr. Miguel, had a number of flats, which they kept for the purpose of hiring to discharge vessels wanting to pass the bar".

"Alexander Milne testified that, prior to the cession, a considerable number of small schooners and crafts navigated the bayou, that, at low water, it was difficult to get over the bar, but, at high water, they passed".

Pierre Baam testified: "That he commanded a schooner which traded in the bayou during the time of the Spanish government; that * * * the depth of the water, on the bar at the mouth of the bayou was, at the greatest height of water, four feet and a half, and the lowest, one foot and a half; that the schooner in which witness traded drew four feet and a half; when loaded; that, at the time the American government took possession of the country, the vessel in which witness traded which drew three feet and a half and four feet, when loaded, always came to the basin to discharge.

In 1847, the General Assembly directed the Attorney General to proceed against the Orleans Navigating Co. for the forfeiture of its character (See Act. 244 of 1847, p. 202), and the suit was brought and resulted in a judgment decreeing the forfeiture, on the ground that the company had not complied with its obligations. The Court, among other things said.

315 "The navigation, which, by the improvements, of near half a century, should have attained all the perfection of which it is susceptible, is obstructed so as to cause great expense and a delay of navigators by lightening; is dangerous, so as, often, to subject the vessels and commerce to much loss, for which, there is no recourse, except as against an insolvent debtor. In fact, we doubt if the bar, at least, which affects the whole navigation, is in a better situation than in the time of Baron de Carondelet. So that, the whole object of the act of incorporation has failed." State vs. Orleans Nav. Co. 7 A. 681. The Judgment thus quoted was rendered in 1852, and, during the same year, the General Assembly, in anticipation of such a result, passed an act (No. 309 of 1852, p. 208) providing for the liquidation of the company and the sale of its property, and further providing as follows:

"SEC. 4. * * * That it shall be a condition of said sale, that, if the purchasers shall organize themselves into a corporation, under the law of the state, for a term of 25 years, for the purpose of carrying out and effecting all the improvements detailed and described in the report and plans known as Harrison's report and plans, including the construction of a new basin at the junction of the Canal Carondelet and Bayou St. John, of the depth and dimensions set forth in said report, and shall actually complete and effect all said improvements, within the term of three years from the date of this charter, then, the said corporation shall be entitled to receive and exact such tolls and revenues, for the use of said canal, bayou and road, as the Orleans Navigating Company was entitled to receive under its charter: Provided, that, at the

"end of said term of 25 years, the State of Louisiana shall have the right to take possession of said Canal Carondelet and Bayou St. John, and all the property and improvements connected therewith, at the expiration of the term above mentioned, should the
 316 "Legislature determine so to do, upon paying to this corporation the value of said property, to be appraised by five competent persons, as experts, two, to be appointed by this corporation, and two, by the governor, and the four, thus appointed, shall appoint the fifth. Said experts shall be required to take an oath to discharge their duty faithfully. In the event the State shall not determine to take possession of said property, as herein provided, then, this corporation shall be in existence for 25 years from and after the expiration of the term in this section mentioned aforesaid, and, at the end of said second term of 25 years, the said property may still become, absolutely, the property of the State of Louisiana, and no compensation required to be made to this corporation."

Under the act thus quoted and the judgment of forfeiture, Jacob S. Halsey was appointed liquidator of the Orleans Navigation Company, and, by order of Court, advertised for sale "all the rights, title, claims and interest which belonged to the Orleans Navigation Company", by virtue of the Act of July 3rd, 1805, and "all the rights, title, claims and interest belonging to said company by virtue" of the Acts of Congress approved March 3, 1807, February 10th, 1809, and April 18, 1814, as, also, several parcels of real estate. The sale took place on June 24th, 1852, and the property was adjudicated to James Currie, to whom, an act of sale was passed by Halsey, the liquidator, on June 28th, following. Thereafter; on October 19th, 1852, the New Orleans Canal & Navigation Company was incorporated (by a notarial act) for the purpose of "making improvements upon the Canal Carondelet and Bayou St. John and for other purposes * * * in accordance with an act approved March 18th, 1852 and in accordance with the charter of the Orleans Navigation Company". On October 26th, following certain persons, appearing as the principals of James Curry and as the owners of the property which had been adjudicated to him, conveyed the same to the New Orleans Canal and Navigation
 317 Company, thus organized, and that company possessed and administered it until 1857, when, apparently, it became unable to go on and to carry out the scheme of improvement for which it had been created.

By Act, 160 of 1857, therefore the Carondelet Canal and Navigation Company was chartered, and (sec. 3) authorized "to enter upon and take possession and control of the Canal Carondelet—and Bayou St. John, for the purpose of completing the works and improvements thereon, undertaken and commenced by the "New Orleans Canal & Navigation Company", in pursuance of the provisions of the act of the Legislature of the State of Louisiana, entitled: "An Act relative to the Orleans Navigation Company, the Bayou St. John and Canal Carondelet, approved March 12, 1852," * * * ; provided, further, that the corporation hereby

"created may depart from the plan of improvement of said Canal and Bayou, to which reference is made in said act, designated as "Harrison's plan," so far as said plan proposes a basin, at the junction of said Canal with said Bayou, and the construction of a Breakwater at the mouth of said Bayou, at Lake Pontchartrain, in case a majority of the Board of Directors should determine that such works are not demanded by the interest, safety, or convenience of commerce."

The Act further provides:

"Sec. 20. Be it further enacted, &c., That this corporation shall have existence for and during the term of twenty-five years from and after the 17th day of October next; provided that the State of Louisiana shall have the right to take possession of said Canal Carondelet and Bayou St. John and all the property and improvements connected therewith, at the expiration of the term above mentioned, should the Legislature determine so to do, upon paying

318 "to this corporation the value of said property, to be appraised by five competent persons, as experts, two, to be appointed by this corporation, and two, by the Governor, and the four, thus appointed, shall appoint a fifth; said experts shall be required to take an oath to discharge their duty faithfully. In the event that the State shall not determine to take possession of said property, as herein provided, then, this corporation shall be in existence for twenty-five years from and after the expiration of the term in this section mentioned aforesaid, and, at the end of such second term of twenty-five years, the said property may still become absolutely the property of the State of Louisiana, and no compensation required to be made to this corporation".

Thereafter, by Act No. 74 of 1858, (p. 46) entitled "An Act relative to the Carondelet Canal and Navigation Company" it was provided Sec. 1. * * * That the Carondelet and Navigation Company * * * shall have the right to construct lay-outs, basins and half moons, for steam and other crafts, at any point they may deem convenient, on the Bayou St. John, the Basin and Canal Carondelet, and to extend the said lay-outs, basins and half moons on any part, or portion of the roads, streets, or neutral grounds through which run their navigable waters: Provided, they shall furnish the public with roads required by law, along and around such lay-outs, basins, and half moons, of the width as existing at the time of such extension, and keep the same, subject to the ordinance of the Common Council of New Orleans."

Other sections of the act authorize the Company to build a railroad and, for that purpose, to expropriate property; prohibit the City, after five years, from draining into the Bayou St. John; confer upon the City the privilege of building bridges over the bayou; give the Company the exclusive right to grant towing privileges on its waters; give the Company the right to carry out its works according to any plan that it may adopt; authorize the

319 directors to impose fines, for violation of its rules, "recoverable before any Judge of competent jurisdiction"; authorize the company to issue bonds, and to secure the same by

mortgage of all its property, privileges and immunities; exempt the canal and railroad from taxation for fifty years. Section 4 of the act reads: "Sec. 4 * * *. That the said company shall enjoy corporate succession, during fifty years from this date; after "which time, it may revert to the State, upon due compensation, made according to award by three commissioners; one, appointed by the Governor of the State, one, by the Company, and the third by any Court of record of New Orleans". The last section reads: (Sec. 10).

"That this act shall be in force from and after its passage."

And there is no repealing clause. The act was approved March 10, 1858. By Act 161, of 1906 (p. 305) the General Assembly provided for the appointment of a Board of Control for the "Bayou St. John and Canal Carondelet and Basin," invested it with the control of the property, and ordained certain rules for its management, the last section of the act providing that it "shall take effect, on, and after, the first day of October, 1907", and repealing all laws in conflict; and it appears that the Board has been appointed. On March 10, 1908, the stockholders of the defendant Company, in view of the expiration of its charter, selected three commissioners to liquidate its affairs. There was also appointed a commissioner to participate in the making of the award, as provided by Section 4 of the act of 1858 (above quoted), and notice of the appointment was served on the Governor of the State, accompanied with a request that he take action with reference to the appointment of the other commissioners. The State however took no action in the matter until March 5, 1909, when the Attorney General made a written demand upon the liquidators of the company to turn over to the State Board of Control, "the Bayou St. John and Carondelet Canal and Old Basin, together with all the properties and improvements

"connected therewith or in anywise thereto belonging or appertaining." To which demand, the Liquidators of the

Company, through their counsel, answered, that they would comply, "whenever the State complies with its contract obligations * * *, as declared in Sec. 4 of Act 74, of 1858." And, shortly afterwards, this suit was instituted. There was judgment herein in the district court holding that the three commissioners provided for by Sec. 4 of act 74 of 1858, must be appointed before any further proceedings can be had, and dismissing the suit, "as premature, without prejudice to the rights of either party to question the report and award of the said commissioners, by any process, when the same shall have been made." The State has appealed, and the defendant has answered, praying that the judgment be amended.

"First. By striking out all that part of the opinion of the court which holds that the State is entitled to take over, without compensation, such property as was held and owned by defendant company up to March 10, 1858, and that, for the property acquired and improvements made subsequent to the passage of act 74 of 1858, the company is entitled to compensation according to the award of the three commissioners provided for in that act."

"Second. To enter a judgment rejecting the demand of the State,

"as made in the petition, with reservation of its right to take over the property and franchises of the defendant on an award made by the three commissioners provided for in said act of 1858. And, in all other respects, the defendant prays that said judgment may be affirmed, with costs.

Opinion on the Exceptions.

Defendant, by exception, (1) denied that the Attorney General is authorized to bring the suit, and (2) called upon plaintiff to deraign its title to the property sought to be recovered.

321 Act 65, of 1884, Sec. 1, provides:

"That the Attorney General be, and he is, hereby, authorized and empowered to institute and prosecute any and all suits he may deem necessary for the protection of the interests and rights of the State." R. S. 131 make it the duty of the Attorney General:

"When required by the Governor, or either branch of the legislature, to appear for the State, in every court or tribunal, in any cases in which the State may be interested or may be a party." And it is shown that this suit was instituted and is prosecuted by direction of the Governor.

We know of no other sources from which the Attorney General could derive authority to bring a suit than the Legislature and the Governor, and no better language for conferring such authority than that by which the authority under which he is now acting has been conferred.

2. The defendant company was created by the State for the specific purpose of assuming the management of the property described in the petition, and the statutory contract, outside of which it had no existence, and by virtue of which, alone, it came into possession of the property in question, requires it to account for its gestion. This suit is brought for the enforcement of that law, and contract, and the defendant has no standing to call upon the State to exhibit or deraign any other title. The exceptions were, therefore, properly, overruled.

On the Merits.

Counsel for defendant say, in their brief: "The clear meaning of this act" (referring to the act 74, of 1858) "is, that the State gives the corporation a free and absolute grant of corporate life, without conditions or price, and reserves the right to take its property, at the end of 50 years, upon making due compensation, to be determined as provided."

322 We do not, however, find the clear meaning thus referred to, and, if it were clear, from the act of 1858, that the State has obligated itself to compensate the defendant for any of its property that may be taken, the act of 1857 is, also, to be reckoned with, and, between the two, the question remains what does the property of the defendant, for which it is entitled to compensation, consist of; and, does the obligation of the State to make compensation therefor,

preclude it from, in the meanwhile, recovering any property of its own that may be in defendant's possession?

The act of 1858 purports to be a piece of independent legislation, telling its own story, without affecting, or being affected by, any pre-existing law, and Section 4, on which defendant relies, and which we reproduce for convenience, reads: "That the said Company shall "enjoy corporate succession during fifty years from this date; after "which, it may revert to the State, upon due compensation being "made, according to award by three commissioners, one, appointed "by the Governor of the State, one, by the Company, and the third "by any Court of Record of New Orleans."

The only antecedent for the relative pronoun "it", as used in the section quoted, is, "the said Company", but, as it (the said Company) cannot "revert" to the State, in any practical way, we disregard all rules, except that which requires a court to endeavor to give effect to the real meaning of the law maker, and, seeking an antecedent elsewhere, naturally prosecute the search within the limits of the Act of 1858, before going further. Section 3, provides that the City of New Orleans shall be prohibited, after five years, from draining into the Bayou St. John;" that it shall indemnify the company, if it does so; and, that it may build bridges over the bayou, within five squares of each other. There is nothing there that could

323 "revert to the State." Section 2 provides that "The Company shall have the right to construct a railroad, with single "or double track, on either side of their basin, canal and the "Bayou St. John, from the head of said basin, on Toulouse street to "the lake end, with the privilege of passing through such private "property and lands as may be needed, upon due compensation "made to the owners thereof, in conformity with existing laws; and "they shall be authorized to transport, on said road, freight and "passengers, for hire." (And there is a further provision concerning the use of steam, within the city, and the subjection of the road to general police regulations). Looking back a little, we find that in 1840, the Orleans Navigation Company had started to build such

324 a railroad as is thus provided for; that is to say, a road which was to extend from the corner of Toulouse and Franklin streets to the lake, and that it was prohibited from so doing by an injunction sued out by the Pontchartrain Railroad Co., on the ground that, under the charter of that company, which had still fifteen years of life (expiring in 1855), it had the exclusive privilege of operating railroads to the lake. *Ponch. R. Co. vs. Orleans Nav. Co.*, 15 La. 404. It would appear, then, that the charter, and presumably, the exclusive privilege, of the Pontchartrain Co., having expired, the Carondelet Co. in 1858, concluded that it would be well to revive the abandoned enterprize of its predecessor, and it can very well be understood that it would desire to provide against the reversion to the state of the railroad, along with such property and improvements as might be included in the reversion clause of the act of 1857. In that connection the following considerations appear to us worthy of some attention. Under its charter and contract, the Company was bound to make all the improvements upon the canal

and bayou that were called for by "the report and plans known as Harrison's report and plans" except, that, by the Act of 1857, it was relieved of the obligation to build a basin, at the junction
 325 of the canal and the bayou and to build a breakwater off the mouth of the bayou, in the lake. Act. 309 of 1852, Sec. 4; Act. 160 of 1857, Sec. 3. As "Harrison's report and plans" have not been produced, we have no means of knowing what they required, but, judging by the two improvements of which the Company was thus relieved (under the Act of 1857) and from the fact that the New Orleans Canal and Navigation Co. had broken down in an attempt to carry them out, we should imagine that they were quite elaborate and called for a heavy expenditure of money; and the Company (now in liquidation) was probably of the same opinion, since the act of 1858, admittedly "promoted" by it, contains the provision "Sec. 5 * * *". That the said Company shall have exclusive power to follow and carry out their works in conformity "with such plan, or plans, as they may, at any time adopt and deem "best calculated to forward the interests of commerce."

The Company, therefore, instead of being bound to carry out a scheme of improvements, perhaps, elaborate and expensive, was given *carte blanche*, to improve the canal and bayou, or, at its option, to confine itself to the collection and enjoyment of the revenues of that property; the reference in the statute, to the "interests of Commerce" being negligible. Under the circumstances stated, and, unless it should be conceded that the company had become the owner of the canal, bayou and basin, the question, as to what there would be to "revert" to the State was left to it to determine, and there need have been little or nothing, belonging to the company, to fall under the reversion clause of the statute. That being the case, the provision in the act of 1858, that "it may revert" etc., would have been comparatively valueless to the state, and innocuous to the company, if it had not been for the provision about the railroad, the prospective reversion of which may have been regarded as worthy of the serious consideration of the promoters of

the act, the more particularly, as the railroad was to be built,
 326 and roads of that character usually require something better than a prospective reversion in order to induce the subscriptions required to bring them from the realms of fancy into the domain of fact.

Whether this be the true solution of the problem, or not, we are unable to find anything else in the act of 1858, than the railroad to which the relative "it," as used in Sec. 4, can, in any way, be made to relate. It does not relate to the "lay-outs, basins and half moons", referred to in Sec. 1; nor, to the "fines", which the General Assembly, in a spirit of unusual liberality, by Section 7, authorized to the Company to impose, to be "recovered before any judge of competent jurisdiction"; nor, does it apply to the bonds which, by section 8, the Company was authorized to issue; nor, yet, to the exemption from taxation, conferred by section 9. As, however, the act of 1858 contains no repealing clause, and the act of 1857 is in *pari materia*, the search for the vagrant antecedent may

be prosecuted in the last mentioned statute. But, in that connection, it will be as well to bear in mind that we find the meaning, or, possible, application, of the language that we are endeavoring to interpret ambiguous and doubtful; that the concession is made (though the fact is apparent enough without it) that the instrument, or statute, containing that language, was "promoted", and, as we believe, prepared, by the defendant; that the language in question is here invoked as importing a donation, release, or gratuity, prejudicial to the state and advantageous to the promoter; and, that the rule, in such cases, is, that, where, two, or more, interpretations are possible, that one should be adopted which is most favorable to the party who did not create the ambiguity, or doubt, and, as against whom the donation release or gratuity is sought to be enforced; which rule, as it appears to us, is particularly applicable in this case, for the reason, that a private corporation, that can obtain the passage of a statute purporting to confer

on it the power to impose fines upon ordinary citizens, for
 327 violations of its rules to be collected whenever a judge of competent jurisdiction is found, must be presumed to have been able to obtain all that it wanted, and is not entitled to get anything by implication or upon a doubtful construction of its grant.

The act of 1857 (No. 160), as we have stated, imposed upon the defendant corporation (thereby created) the obligation of making improvements to the channel of navigation here in question, according to "Harrison's report and plans", save as to one basin and a breakwater (Sec. 3). It provided that the corporation should exist for 25 years (from Oct. 17, 1857), at the expiration of which period, the State was to have the right to take possession of the Bayou St. John, and all of the property "and improvements connected therewith" upon paying to the corporation "the value of said property" according to an appraisalment for which provision was made.

It further provided, that should the state not elect to take possession of the property, the corporation should continue for another period of 25 years, at the expiration of which the said property might become, absolutely, the property of the State of Louisiana, and no compensation required to be made to this corporation."

The Act of 1858, as we have seen, relieved the company of the obligation to improve according to any other plan than such as it might choose to adopt.

It then declared; "that the said company shall enjoy corporate succession during fifty years from this date; after which time, it may revert to the state, upon due compensation being made", etc.

As has already been shown, being relieved of the obligation to make improvements other than as it saw fit, it is not likely that there would have been anything of value to revert to the

328 state, under the act of 1858, unless it should be considered that the company owned the bayou, the canal and the basin, for the "improvement" of which public property, the different corporations had been established.

With regard to that property; it seems to have been fairly demonstrated; by the testimony adduced in cases of Orleans Naviga-

tion Co. vs. Mayor, 1 M. 269; 2 M. 10, 214; 11 M. 38; by the attitude and admissions of the Company and the rulings of the court in those cases and in the cases subsequently arising, to which, the successors of the Orleans Navigation Co., were parties, and, by other facts and circumstances disclosed in the record; that, when the Orleans Navigation Co. was created, the Bayou St. John had been a navigable stream, actually used as such, for the purposes of commerce, during a period beyond the memory of man; that it was so used at that time, and has been so used ever since; that the Carondelet Canal was excavated under the direction of the Baron de Carondelet, representing the Spanish Government, mainly, at the expense of the citizens of the province, who furnished three fourths of the required labor (as against one fourth, furnished by the Government) and to whom appeals were made for help in a public work, to be excavated through public land, and which was to connect the City of New Orleans, for the purposes of drainage, and, later, for the purposes of navigation, with the Bayou St. John, thereby establishing a highway of navigation between the City and the Lake and between the Lake and the Mississippi River.

The consensus of the testimony, given by the witnesses in the case last above mentioned, was to the effect as above stated; that is to say; that, though navigation, in and out of the Bayou, was rendered more or less difficult by the existence of a bar, which had formed in the lake off the mouth of the bayou, and by obstructions within the stream, there were, and had always been, so far as the witnesses knew, from 30 to 50 vessels constantly engaged in such navigation from points on the north side of the lake, on Mississippi Sound, and from Mobile, Pensacola, Apalachicola and other ports and places. It was testified that vessels were built and repaired in the bayou, and "that almost all the planters on the opposite side of the lake, each, had a schooner, and they had no other means of communicating with New Orleans and disposing with their produce." The Navigation Company, as defendant, in the suit, through its counsel, admitted, and contended, that the act creating the Company operated no alienation of the stream, or of the use of the stream, and that it was "still, and had ever been, since the company has had the charge of improving it, a public highway, free for the use of all the citizens of the United States."

And the Court, sustaining the contention of the Company, as, also, that of the State, to the effect that the stream was a navigable highway, and, under the ordinance of 1787, free to all citizens of the territory, and of the United States, held, that such freedom was not incompatible with regulations having for their purpose the improvement of the navigation and imposing a charge upon those who enjoyed the benefit of such improvement, and that, though there had been no alienation of the soil, and though the Bayou had not ceased to be a "public highway", the regulation and charge were legal and proper.

Nor, so far as any alienation, or attempted alienation of the soil was concerned, could the Court, very well, have held other wise, since the only language in the charter of the Company which pur-

ports to grant anything with reference to the Bayou St. John is that which declares (Sec. 9); "That, as soon as the said Company shall have improved the navigation of Bayou St. John", it shall be entitled to charge tolls proportioned to the improvement, and that it may construct roads, on either side of the bayou, and charge tolls for the use of the same.

In "State vs. Orleans Navigation Co.", 7 A. 681 (being the suit in which the charter of the Company was declared forfeited and in which the State, present plaintiff, and the Company, under 330 which the present defendant is asserting some claims, were the sole litigants) the Court said:

"The Bayou St. John was a navigable stream previous to the cession of Louisiana to the United States. The Spanish Governor, the Baron de Carondelet, excavated the basin and canal to connect the navigation of the bayou with the rear of the City. * * * All its" (The Company's) "property *except its right upon the Basin, Canal and Bayou St. John* have been sold. * * * The evidence in the case satisfied us that the Company has not *kept the navigation* of the canal and bayou in the situation required by the charter * * *. The navigation, which, by the improvements of near half a century, should have all the perfection of which it is susceptible, is obstructed * * *. In fact, we doubt if the bar, at least, which affects the whole navigation, is in a better situation than in the time of Baron de Carondelet." (Our italics.)

What were the "rights upon the basin canal and bayou", which the Company had not sold? Clearly, those granted by its charter, to improve the navigation and collect tolls, as the improvements were made. What did the Court mean by saying that the Company had not "kept the navigation * * * in the situation required by its charter", if the canal and bayou were not navigable when it took charge for the purpose of improving the navigation? What could have been its meaning, in expressing the doubt whether the bar, "which affects the whole navigation is in a better situation than in the time of Baron de Carondelet", save that the bar had always affected the navigation? And, what greater bearing had the fact that the bar had always affected the navigation of Bayou St. John, on the question of the navigability of that stream, than has the fact, that the bar off the mouth of the Mississippi affects its navigability, upon the question of the navigability of that great highway?

As to the canal; in addition to the paragraphs from the "Moniteur" (a paper admitted to have been "printed under the eye 331 of Baron De Carondelet") announcing the project of a canal, which was to rid the City of its stagnant waters and "in successive years, will be changed into a canal of navigation, for schooners", and will have a broad banquette upon either side, planted with trees, "which will afford an agreeable promenade" and appealing to the "zealous inhabitants" to assist in the work, there was offered in evidence, in the case of Orleans Navigation Co., vs. City of New Orleans, 2 M. pp. 12 et seq. the testimony of a number of witnesses, among whom was "Metzinger" who testified "that he was an aide de camp of the Baron de Carondelet; that he began the canal

with sixty negroes, supplied by the inhabitants "of the City; that, "in the second year, the canal was widened and the work was "carried on with the negroes furnished by their owners, such individuals as had none, working, themselves, or furnishing an equivalent in money. The number of negroes thus employed was, "on an average after the first year, from 160 to 175. The presidios, "or convicts, were about the same number, but worked only when "there was no employment for them elsewhere * * *. In his "judgment, the convicts did not do one fourth of the work " * * *. The witness, observing that, in heavy rains, those "waters brought so much dirt that the canal would be soon filled "up, he represented this circumstance to the Baron, who replied "the canal was dug for the conveyance of the waters of the City, "as well as for the purpose of navigation, and must answer both "the intended objects."

Borè testified; "That the inhabitants furnished their negroes cheerfully. He dwelt at the distance of five miles from the City and sent his gang."

Bretonnier "was employed by the Baron to solicit his neighbors "to send their negroes to work on the Canal. He does not believe "any of them would have sent any, if they had believed that the "object was not for the benefit of the City."

Castenado "was treasurer of the City when the Baron began 332 the canal. "His avowed object was to relieve the City from "the great mortality which was occasioned by a quantity "of putrid water which lodged on the commons. The inhabitants "cheerfully yielded their negroes. He sent his * * *. The general "opinion of the people was that the canal would answer the purpose "of a drain and of navigation".

In the case to which we are thus referring, the Court decided (in favor of the Navigation Co.) that, whilst the Canal had been dug for the double purpose of drainage and navigation, the time had arrived when the two uses were incompatible and that the canal should, thereafter, be used, solely, for the purpose of navigation.

In the suit in which the charter of the Company was declared forfeited (State vs. Orleans Nav. Co. 7 A. 681), the Court said:

"The Spanish Governor, the Baron de Carondelet, excavated the "basin and Canal to connect the navigation of the bayou with the "rear of the City."

In "City of New Orleans vs. Carondelet Canal & Navigation Co." 36 A. 397, the Company (defendant, there, and defendant, here) resisted the demand of the City for the payment of a tax on its capital stock, and the Court, sustaining its contention, said:

"The defendant corporation was created in 1857 (Act 160) and "acquired the right, power and authority to enter upon and take "possession and control of the Canal Carondelet and Bayou St. "John, for the purpose of completing the works and improvements "thereon and other privileges".

It, then, refers to the clause in the act of 1858, exempting the "canal and railroad", from taxation, and holds that "the canal was state property, and, of course, necessarily, exempt" and that the

exemption granted by the statute applied to the capital stock of the company.

In "Carondelet Canal & Navigation Co. vs City", 44 A. 333 396:

"The collection of the tax was being enforced by seizure and sale" (of a lot of ground near the Bayou St. John) "when an injunction was sued out, on the ground that plaintiffs are the lessees of said property and are entitled to the franchises of its predecessor, the Orleans Navigation Company, and the property, being owned by the State, will revert to the State, at the expiration of its charter, and the Canal Carondelet was known as the work of the Spanish Governor whose name it bears. As public property, it became a part of the public domain, at the cession of Louisiana. In 1805, the Territorial Legislature incorporated the 'Orleans Navigation Co.' and made it the duty of, and gave the authority to, that Company, to improve the Canal and bayou * * *. The land on which the tax is claimed, plaintiff admits, in its petition and in its brief, belongs to the State. It was donated by Congress, on April 14, 1814":

In the case of Wheelock et al. vs. St. Louis & San Francisco Railroad Co. No. 13244 of the docket of the U. S. Circuit Court, it was shown (as we have seen, in the statement which precedes this opinion), that the defendant, Railroad Co., owned a majority of the stock of the Canal Company; that the Railroad Co. was seeking to acquire certain property of which the Canal Company was in possession, and, to which, its board of directors (nominated by the Railroad Co.) declined to assert title, on the ground that it belonged to the State of Louisiana, as connected with the Canal; that thereupon the suit was brought by certain minority stock holders of the Canal Co., complaining that they were not getting fair treatment.

The report of the Special Master in the case, sustained the position, taken by the Railroad Co.; that, as the holder of the majority of the stock of the Canal Co., it could find no ground upon which to

334 assert the title of that company or to deny the title of the State to the property, which, it (in its capacity as Railroad Co.) was seeking to acquire. The same majority stock hold-

ers, of the Canal Company, as we understand the situation, are now represented by the defendant liquidators in the contention that the Canal, and all the property connected therewith, belongs, not to the State, but, to the Canal Co. From the evidence; from the judicial admissions of the defendant and its predecessors; and, from the rulings of the courts, in litigations to which defendant and its predecessors were parties, therefore, we conclude that the Bayou St. John has always been a navigable stream, and, with the Carondelet Canal and Basin, and the property connected therewith, has always been property, the title to which has been held by the Government, for the use of the public. As a navigable stream, the Bayou St. John was inalienable, under the ordinance of 1787, agreeably to the provision of which, Louisiana was admitted into the Union as a State. As public property, created at the expense of the citizens of the Province, who bore that expense upon the faith of the representations

of the Government that it would be dedicated to their use, the Canal was also inalienable, unless we are willing to concede that a Government is bound by no considerations of honor or good faith. And, if, upon the completion of the canal, the Baron de Carondelet, or the Spanish Government, which he represented, could not, honorably, or legally, have conveyed the canal to a private individual or corporation, to the prejudice of those at whose expense it had been constructed, neither could the Government of the United States, as the successor of the Spanish Government, and neither could the State of Louisiana, as the successor of the United States, by any right of dominion, acquired in that capacity over the navigable streams and public highways within her territory. We do not find, however, that either of the governments mentioned has made any attempt to alienate the property here in question, or that the defendant has ever acted under the belief that there had been such alienation. It is thought that, in the notarial act of conveyance

335 from Halsey, liquidator, to Currie, there is some language used which has the appearance of an attempt of that kind, but, Halsey could not convey more than he had, and the grantee of Currie, the New Orleans Canal & Navigation Co., and its grantee, the present defendant, seem to have been aware of that principle, since the present defendant acquired only the interest of its grantor in the property. The legislative acts of 1852 & 1858, relied on by defendant, assume, as a fact (that which no one, we think, could reasonably deny) that the bayou, the canal, the basin, and all that constituted what may be called, the thing, the plant, the highway of commerce, known as the "bayou St. John and Carondelet Canal" was property held by the State for the use of the public, just as the streets and thoroughfares of the City of New Orleans were held, and the references in those acts to "property and improvements" which were to revert to the State, related, and could relate, as to the title, only to such property and improvements as the different corporations were expected to add to that which, the title being already vested in the state, for the use of the public, could not revert to the State.

These being our conclusions with reference to the status of the Bayou St. John and the Canal Carondelet we can find nothing in the act of 1857 to which the word "it", as used in the act of 1858, could, reasonably or otherwise, be held to relate and we are obliged to fall back upon the solution; that it was intended to relate to the railroad, provided for in the preceding section of the same act, and which, having never been built, can afford no basis for defendant's demand for compensation and for a continuance of its possession of public property.

The property acquired in the name of the Orleans Navigation Company (or New Orleans Navigation Company, or Company of Navigation of New Orleans), as described in the record, was, for the most part, so acquired, by titles which fix its destination, irrevocably, as a part, or appurtenance, of, or, as connected with,

336 the property which that Company was administering, for the benefit of the public; but, even if, or when, that were not

the case, where the property acquired was, by the Company, made a part, or appurtenance, or improvement, of, or, was connected, with, the property so administered, and occupied, that relation, at the date of the expiration of the defendant's charter in March, 1908, the result, for the purposes of this suit, is the same, since, under the Act of 1857 (No. 160, Sec. 20), unrepealed by the Act 74, of 1858, the State is entitled "to take possession of said Canal Carondelet and Bayou St. John and all the property and improvements connected therewith". The Company may, of course, own property which was not, at that, or at any previous time, connected with the Bayou St. John and Carondelet Canal, and, to which, the State has, therefore, no claim, under the allegations of the petition in this suit. As to the \$3000, deposited in the Hibernia Bank & Trust Company, herein in dispute, the evidence in the record is insufficient to enable us, now, to determine to whom it belongs, and we are of opinion that the question of its ownership should be made the subject of further investigation.

It is, therefore, ordered, adjudged and decreed that the judgment appealed from be annulled, avoided and reversed and that there now be judgment in favor of the plaintiff, the State of Louisiana, and against the defendant, the Carondelet Canal and Navigation Company, in liquidation, herein represented by A. J. Davidson, J. H. Elliott and Hans Widner, its liquidators, decreeing that the Carondelet Canal, Bayou St. John and Old Basin, together with all the property and improvements connected therewith or thereto appertain, ing or belonging, be delivered to, and into the possession and control of, said State of Louisiana, to be managed and administered by it, for the use of the public, through the Board of Control for the Bayou St. John and Carondelet Canal and Old Basin, appointed by the

Governor, pursuant to the provisions of Act No. 161, of 1906,
337 and that the same be so delivered, free from any obligation on the part of the State to pay or compensate the said defendant therefor, or for any part thereof.

It is further adjudged and decreed that said defendant and said liquidators render an accounting, showing their receipts and disbursements, in the management of the said property, since March 10, 1908.

It is further decreed that this case be remanded to the District Court for further investigation, upon the lines indicated by the foregoing opinion, unto the question of the ownership of the \$3,000.00, now on deposit in the Hibernia Bank & Trust Company; that the right of the plaintiff, to obtain judgment for such amount as may be found due upon defendant's accounting and to take such further proceedings and obtain such further orders as may be required for the execution of this judgment, be reserved.

It is further decreed that defendant pay all costs.

Syllabus.

1. Bayou St. John is a stream which has been navigable and has been actually navigated, by vessels engaged in commerce, for a

period beyond the memory of man, dating from the close of the Spanish occupation of this country, and, with the Canal Carondelet, constructed under the direction of the Spanish Governor, whose name it bears, has always been, and is, a public highway of commerce.

2. Section 4 of act 74, of 1858, purporting to impose upon the State of Louisiana the obligation to compensate the Carondelet Canal & Navigation Company, upon the expiration of its charter, can only be held to apply to compensation for a railroad, which, by Sec. 2, of the charter, the Company was authorized to build. And, as no such road was built, the State is entitled, under the terms of that act, construed with act 309, of 1857, to be restored to the possession of the property, without making compensation.

338 3. Where the meaning of a statute is doubtful, and it appears that its passage was promoted by a party who invokes it as importing a donation, release, or gratuity, to his own advantage and to the prejudice of another, the rule is, that, where two or more interpretations are possible, that interpretation will be adopted which is the more favorable to the party who did not create the doubt, and against whom the donation or gratuity is sought to be enforced.

4. There are no other sources than the General Assembly and the Governor from which the Attorney General can obtain authority to represent the State, in court, and no better language could be selected for conferring such authority than that used in R. S. 131; Act 65 of 1884; and the letter of instructions and ratification contained in this record.

5. A corporation created by State statute, for the purpose of administering particular property, and, of which, it goes into possession under and by virtue of such statutory contract, has no standing, when sued thereunder, for possession, to call upon the State to exhibit or deraign any other title.

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Application for Rehearing.

Supreme Court of Louisiana.

No. 18211.

STATE OF LOUISIANA

VS.

CARONDELET CANAL & NAVIGATION CO.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

Your petitioners, the defendants as liquidators of the Carondelet Canal & Navigation Company, with due respect show that there is material error to their prejudice in the opinion and decree herein rendered on Saturday June 25th, 1910 as follows, to-wit:

1st. That the court erred in finding that there was in evidence a copy of an excerpt from the report of E. D. Saunders, Special Master,

filed July 13th, 1904 in the suit of George G. Wheelock et al. vs. St. Louis & San Francisco R. R. Co. et als. in the U. S. Circuit Court.

Such a document is found in the record filed as of date Feb. 21th, 1910, the day when the lower court handed down its decision, but such document is an unlawful and improper interpolation into the record, as it was never offered in evidence by either of the parties as shown by the note of evidence. Therefore, this court had no right, power or authority to examine, refer to, quote from or use the said report in deciding this case.

2nd. That the court erred in finding that the suit aforesaid, "appears to have been an action brought by the minority stockholders of the Carondelet Canal & Navigation Company in which they complained that the majority stockholders, being also interested in the St. Louis & San Francisco R. R. Co., were preferring the interests of the Railroad Company to that of the Canal Company in the matter of a certain proceeding by the railroad company to expropriate certain property appurtenant to the Carondelet Canal."

3rd. That the court erred in finding from pleadings not before it, and not offered in evidence and located in a foreign court that the position of the majority stockholders in the Canal Company in said litigation is entirely at variance with their present position.

The truth of the matter is that the issues in the Wheelock case were that the minority stockholders asked for a receiver of the Carondelet Canal & Navigation Company on the ground that the majority of its stock was held by and its Board of Directors were dominated by the St. Louis & San Francisco Railroad Company, and that the powers of the Board of Directors were being used to injure the Canal Company and to benefit the Railroad Company because, 1st. The canal company owned the public highways or streets alongside said canal known as Carondelet Walk, and ought to be compensated in the sum of Two Hundred and Fifty Thousand Dollars for the use thereof by the New Orleans Terminal Company, a corporation organized and promoted by the St. Louis & San Francisco Railroad Company, to which corporation the City of New Orleans had granted a right of way along Carondelet Walk, but that the directory under the influence aforesaid was refusing to make claim for such compensation to the injury of the stockholders.

2nd. That the directory had granted to the New Orleans Terminal Company a right to lay a switch on the banks of the Canal in order to interchange traffic between the canal and the railroad, that this switch privilege was worth One Hundred Thousand Dollars to the railroad, and was being granted for nothing to the injury and damage of the stockholders; 3rd. That the switch privilege aforesaid would interfere with the right of the canal to build its railroad under the Act of 1858, and would also interfere with the State's reversionary rights in the canal; 4th. That the directory were going to grant to the New Orleans Terminal Company without proper consideration the property of the Canal Company to the New Orleans Terminal Company (this charge referring to the railroad company's demand on the Canal Company to acquire for railroad

purposes a triangular square not making part of the canal, and separated from it by Carondelet Walk, and to acquire a right of way across the corner of the Basin, two claims that were actually being resisted by the Canal Company and were represented by two pending expropriation suits, which were stayed by the threat of the state to intervene, and were compromised as shown in Act No. 77 of the Acts of 1906.)

At no time did the Carondelet Canal & Navigation Company, which was the main defendant in that suit or the St. Louis & San Francisco Railroad Company, take any position contrary to or inconsistent with the proceedings in this case. They simply disclaimed ownership and control over the public highways bordering said canal, which public highways were originally sixty feet wide as shown by the original dedication of the Baron de Carondelet, and which had been encroached upon by the widening of the canal from 15 to 60 feet wide, and always had been under the administration of the City of New Orleans.

4th. That the court erred in stating that "in the case of *Wheelock et als. vs. St. Louis & San Francisco Railroad Co.* No. 13,244 of the docket of the U. S. Circuit Court, it was shown that the defendant railroad company owned a majority of the stock of the canal company; that the railroad company was seeking to acquire certain property of which the canal company was in possession, and to which its board of directors (nominated by the railroad company) declined to assert title, on the ground that it belonged to the State of Louisiana, as connected with the canal."

342 This finding has no foundation in fact whatever.

The railroad company never at any time sought to acquire property to which the canal company declined to assert title on the ground that it belonged to the state. The railroad company did seek to acquire by expropriation a triangle of ground bounded by Villere, Toulouse, Robertson and Carondelet Walk, on which the canal company's office was situated, and a right of way across the Southwest corner of the basin, dug out of land granted to the Orleans Navigation Co. by the United States. The canal company maintained its title to these properties stoutly, and did not at any time admit that the state had any right or claim to these properties. All of this appears by the compromise between the state, the canal company and the railroad company which was ratified by the Legislature by Act 77 of the Acts of 1906. (Acts 1906 p. 117 to 122.)

5th. That the court erred in finding that the report of the Special Master in the case sustained the position, taken by the railroad, that as the holder of the majority of the stock of the canal company, it could find no ground upon which to assert the title of that company or to deny the title of the state to the property which it (in its capacity as a railroad company) was seeking to acquire.

The special Master made no such finding because no such issue was in the case. The main defendant in that case was the Carondelet Canal & Navigation Company, and the other parties were made defendant only as proper and not as necessary parties. The object of the suit was to appoint a Receiver to protect the minority stock-

holders from the alleged sacrifice of the rights of the company on the grounds above given. The only claim of ownership which the canal company declined to set up was an ownership in the public street bordering the canal known as Carondelet Walk, which never had at any time formed a part of the canal and which had always been under the municipal control of the City of New Orleans.

6th. That the court erred in finding that the same majority stockholders of the canal company, as we understand the situation, are now represented by the defendant liquidators in the contention that the canal and all property connected therewith belongs not to the state, but to the canal company.

We have always understood the law to be that a corporation can only be bound by its corporate act, and that all of its stockholders unless they are acting in a corporate meeting cannot bind the corporation. We have also understood the law to be that liquidators, elected at a corporate meeting, and whose election is specially provided for as in this case, represent all the corporators and are in law and in fact a continuation pro hac vice of the corporate existence itself. If the court proposes to override these principles of law in this case, we enter our respectful protest. But these are not the only errors in this finding. The defendants do not contend that the canal and all the property connected therewith belongs not to the state but to the canal company. Nowhere in the defendants' answer do they set up in themselves a fee simple title to the canal. The defendants give a history of the property and from this history they claim:

(a) That in 1805 the canal was a public work and the property of the United States.

(b) That by a federal grant (i. e., the act of the territorial council, judicially held by the Supreme Court of Louisiana to have been approved by the Congress of the United States) perpetual rights to and upon this property were granted to the Orleans Navigation

Company, and that in the exercise of the rights granted that company invested in the enlargement, widening and deepening the canal and in the revetment and enlargement of the basin the whole of its capital stock as judicially found by the Supreme Court when the State attacked the grant made to the Orleans Navigation Company as shown by the record in evidence in this case.

(c) That even in that case it was admitted by the State that if the State should succeed in annulling the grant compensation would have to be made to the Orleans Navigation Company for its expenditures upon this public work.

(d) That the title of the United States to part of the canal was imperfect because the reservation of the canal strip was laid off partly through private lands, and that the Orleans Navigation Company perfected this title both as to the canal reservation and the public highways which bounded it on both sides.

(e) That the enlargement of the basin was made out of land granted by the United States to the Orleans Navigation Company.

(f) That when the state succeeded in forfeiting the charter of

the Orleans Navigation Company it made no attempt to take away from the stockholders of the company their property rights to, or upon the canal, or even to the tolls arising therefrom after the judgment of forfeiture was entered. On the contrary the State through its Legislature (sec. 1, Act. No. 309 Acts 1852 p. 209) ordered the sale "of the entire property of said company real, personal, movable and immovable" * * * "in the block at public auction" to the highest bidder under the condition "that if the purchasers shall organize themselves into a corporation under the laws of this state, for a term of twenty-five years, for the purpose of carrying out and effecting all the improvements detailed and described in the reports and plans known as Harrison's report and plans, including the construction of the new basin at the junction of Canal Carondelet and Bayou St. John etc. * * * the said corporation shall be entitled to receive and exact all such tolls and revenues for the use of said canal, bayou and road as the Orleans Navigation Company was entitled to receive under its charter." To this was attached the proviso that at the end of the twenty five years the state should have "the option either of granting to said corporation a renewal of the right of receiving said tolls for a second period of twenty five years, or of purchasing for itself the property and improvements of the company at the appraised value thereof;" and the further proviso "that if said second term of twenty five years be granted, the whole property shall revert to the state at the end of said second term without any payment or compensation made to said company.

(g) That how the mandate to sell was interpreted by the court which ordered it is shown in the deed from Halsey to Currie as covering all the rights of the Orleans Navigation Company in, to and upon the canal, basin and bayou and all the grants made by the United States to said Orleans Navigation Company by various Acts of Congress.

(h) That the Legislature of Louisiana by Act. No. 160 of 1857 incorporating the Carondelet Canal & Navigation Company, by Section 4 thereof recognized the property of the purchaser under the Act of 1852, which it ordered to be appraised and taken over and paid for by the new company to be: "the property of said company, real, personal and mixed, including the interest in the Canal Carondelet and Bayou St. John, and the works and improvements done and effected thereon, etc." Here is a clear legislative recognition of two kinds of property: 1st. the interest in the Canal Carondelet & Bayou St. John; 2nd. The works and improvements done and effected thereon. These were part of the things which were to be appraised and paid for by the Carondelet Canal & Navigation Company, and for which it gave \$100,000.00 of its full paid stock, and assumed part of the unpaid purchase price debt due to the stockholders of the Orleans Navigation Company amounting to \$49,000.00, which sum the Carondelet Canal & Navigation Company paid.

(i) That in granting the charter to the Carondelet Canal & Navigation Company, which constituted a contract between the state and that corporation, which the state could not change without the con-

sent of the company, the state by Section 20 of the Act gave this corporation without any conditions whatever a corporate life of twenty five years and agreed that if this corporate life should at the option of the Legislature end then and not be extended it would pay to the corporation as a condition precedent to its taking possession of said Canal Carondelet and Bayou St. John, and all the property and improvements connected therewith the "value of said property" as determined by five experts. It further provided in this section that in the event the state shall not determine to take possession of "said property," then this corporation shall be in existence for twenty five years longer, and at the end of the second twenty five years "the said property" may still become absolutely the property of the State of Louisiana and no compensation required to be made to this corporation.

(j) That as shown by the evidence in this case, and as judicially found by the Supreme Court of Louisiana in the case of City vs. Canal Co., 36 A. p. 396, the Legislature in 1858 passed Act 74 of 1858 in apprehension of a discontinuation and abandonment of the undertaking and of consequent public calamity.

(k) That said act was a modification with the consent of the company of the contract between the state and the corporation and was so intended to be and is so expressed on its face particularly in regard to the term of the corporate life and the conditions
347 upon which and the time at which the state should take over the corporation's property and pay for it.

(l) That consequently the state on the face of her own statutes and litigations with this company never had or pretended to have and claim to Canal Carondelet and Bayou St. John except as the successor by purchase and compensation of the Orleans Navigation Company, which held the federal grant made in 1805, and that all of her right to take possession and control of said bayou and canal, and the shell road appurtenant thereto, in their enlarged and improved condition, with the jetties and piers at the mouth of the canal and the cut off changing the natural channel of the bayou, and the landings and revetments of the canal and basin, and the grants of land appurtenant to the basin and canal made by the federal government to the Orleans Navigation Company, were derived solely from the provisions of the acts of 1852, 1857 and 1858, all of which being laws in *pari materia* must be construed together.

(m) That the contract set forth in this legislation is protected by the Constitution of the United States from impairment by the State, and that by no devise can the state get possession of the property of these defendants without complying with this contract unless it confiscates their property by legislative, executive or judicial action in contravention of the 14th Amendment to the Constitution of the United States which forbids the taking of a citizen's property without due process of law.

(n) That Section 4 of the Act of 1858 is upon the same subject matter as Section 20 of the Act of 1857, each of them dealing with two subjects, i. e., the length of the grant of corporate existence and the time when the state's right of reversion upon making compensation takes place; that the provisions of Section 4 of the Act of

1858 on these two subjects are directly contrary to the provisions of Section 20 of the Act of 1857, and consequently
348 the provisions of the Act of 1857 are necessarily repealed by implication; that under the Act of 1857 the state had no right to take the defendants' property at all without compensation unless the legislature had at the end of twenty five years determined not to take the property and had granted a second term of twenty five years of corporate life; that under said Act of 1857 the price which the company agreed to pay for a second term of twenty-five years was a surrender of its property without compensation; that by the Act of 1858 the state granted an unbroken and unconditional corporate life of fifty years and hence made it impossible to execute the Act of 1857 in this regard, and relieved the corporation of the price it agreed to pay for a second term of twenty five years, and surrendered its right to take defendants' property without compensation.

7th. That the court erred in using the report of the Master in the Wheelock case against the defendant in this case not only because it was never offered in evidence, but because as a matter of fact the said report was objected to by the parties litigant, was never confirmed by the court, and the objections thereto were never tried and disposed of, and that the action of this court in this regard in using said report, which purports to be an extract only, to determine the rights of the defendants in this case, is a taking of defendants' property without due process of law in contravention of the 14th Amendment to the Constitution of the United States, because it is using against these defendants extracts from a record in a foreign court of which this court had no power to take judicial notice, which was not offered in evidence against these defendants and which they have never had an opportunity to object to or to explain.

8th. That the court erred in finding that the Carondelet
349 Canal and Basin were dug or constructed in 1794 by the Baron de Carondelet. It ought to have found that he dug a small ditch six feet wide afterwards widened to fifteen feet, and not over three feet in depth, together with a small half moon for a basin, and that the present canal of sixty feet in general width and nine feet in general depth and the existing large square basin were constructed with the money and capital of the Orleans Navigation Company and its successors, to whose rights therein and thereon the defendants are subrogated by purchase with legislative consent.

9th. That the question of whether the Bayou St. John was a navigable stream or not is not a main or determining factor in this case, as the court seems to think, because both the legislative counsel, with the consent of the Congress express or implied, and the State of Louisiana had the power to grant the Orleans Navigation Company the right to enter upon and improve the navigation of said stream and to grant them property rights in and upon the said stream as improved, which could not be taken away from them under the constitution and laws of the state and of the United States without compensation.

10th. That if said question is a determining factor in this case

the court erred in holding that the Bayou St. John was a navigable stream in 1805 when the charter of the Orleans Navigation Company was granted, in contravention of the decision of this court in *Carondelet Navigation Co. vs. Parker*, 29 A. p. 430 where that question was at issue and where it was decided that "as one of the highways of intercourse between the State, as a commercial avenue Bayou St. John was not navigable, and that it was rendered navigable by the efforts and with the funds of plaintiff and its predecessor", and in contravention of the decision of this court to the same effect in *Singer vs. Carondelet Canal & Navigation Co.*, 39 A. 483.

350 11th. That the court erred in holding that the Act of 1858 purports to be a piece of independent legislation, telling its own story, without affecting or being affected by any pre-existing law and then holding in another part of the opinion that the Act of 1858 is in *pari materia* with the Act of 1857 so that they must be interpreted together. The Act of 1857 by its title is an "Act to incorporate the Carondelet Canal & Navigation Co. of New Orleans." The Act of 1858 is by its title "An Act relative to the Carondelet Canal & Navigation Company."

12th. That the court erred in holding that because there is no express repealing clause in the Act of 1858, it does not repeal any part of the Act of 1857. This is in violation of the settled rule of law that a subsequent statute on the same subject matter containing provisions contrary to or irreconcilable with those of a former statute repeals the former by implication. This rule is made obligatory on this court by Art. 23 of the Civil Code.

It is impossible for one to compare the provisions of Section 20 of the Act of 1857 with those of Section 4 of the Act of 1858 and to rise from the examination of these two sets of provisions with the conclusion that the two sets of provisions can remain in force at the same time. It is impossible to reason out any parallel existence of the two sets of provisions. And this the court has not done in this case. It has reached its conclusion in the manner of the ancient hexameter:

"*Sic volo, sic jubeo. Stet pro-ratione voluntas.*"

How can a corporation by one act have a corporate life of twenty-five years beginning on a certain date with the option on the part of its creator to give it by the operation of the same act and for a consideration therein expressed a new term of life for twenty five years more, and by another and later act have a corporate existence

for fifty years beginning on a new date and ending on a date
351 entirely different from that in the first Act? Because by the Act of 1857 the bifurcated corporate life began October 17th, 1857 and would end October 17th, 1907, while under the Act of 1858 its unbroken corporate life began on March 10th 1858 and ran to March 10th, 1908.

If the corporate life was governed by the Act of 1857 it ended October 17th, 1907, and that was the view of the legislature which adopted the Act of 1906, organizing the Board of Commissioners to take possession of the canal. That act was drawn ignoring the Act of 1858, because the theory on which the legislature was advised

to pass that Act—an advice given by the Attorney General was that the Act of 1858 was unconstitutional because forsooth it impaired the obligation of the contract between the State and the corporation. But this court has given effect to the Act of 1858 as to the length of the corporate life, by ordering the defendants to account from that date for rents and revenues, and hence this court has differed in view with the legislature on that proposition. If then the length of the corporate life is governed by the Act of 1858 what becomes of the provisions of the Act of 1857 on that subject? Why they necessarily disappear. Suppose the Legislature on October 17th, 1883, at the expiration of the charter of 1857, had notified the company that it proposed to take its property and pay for it? Could it have done so? Most certainly not in the face of the Act of 1858, which this court has enforced, and thus declared valid and binding on the state. If then the state could not exercise the option given it under the Act of 1857 to let the corporation die at that time and to take and pay it for its property, how can it demand now that the price is due it for the second twenty five years of life which the corporation was to buy under that act by the surrender of any right to compensation?

352 If this is true where does the state derive its rights to take the defendants' property without compensation? It never had any such right, except by contract under Section 20 of the Act of 1857, and it arose as a condition of the in-the-future-to-be-made grant of the state, under that act, to let the corporation live for twenty five years longer than the term of its corporate existence as fixed in that Act. But, by the Act of 1858 the parties to the contract agree upon an entirely new and different term of corporate existence. The state says you shall live for fifty years from this new date. You shall have this unbroken term of life without condition and without price, and at the end of this unbroken term of existence "you" or "it", the corporation shall revert to the state upon due compensation being made according to award by three commissioners. The position taken by this court that these two statute-can stand together on this term of corporate existence has been repudiated both by the legislature and by the state as a litigant. The legislature concluded to ignore the Act of 1858 entirely, and to order its commissioners to take this property without any compensation on October 17th, 1907. This was logical but it was a statute impairing the obligation of a contract if the Act of 1858 was valid. The Attorney General in this case, finding it necessary to enforce this act and to get possession of the canal, invented a new ground of unconstitutionality—a ground which is so baseless that this court ignores it and does not even refer to it—but it recognizes and enforces the term of corporate life given in the Act of 1858. The Legislature and the Attorney General both saw clearly that if Section 4 of the Act of 1858 is valid, then Section 20 of the Act of 1857 is repealed, and both the Act of 1906 and the pleadings in this case are based on this theory. This court abandons this theory, and while enforcing Section 4 of the Act of 1858, gives the state a right
353 to take without compensation under the necessarily repealed Section 20 of the Act of 1857. We earnestly submit that the position taken by the court is not maintainable. If Sec-

tion 4 of the Act of 1858 is valid in respect to the term and conditions of the corporate existence of the Canal Company, then it necessarily repeals irreconcilable provisions on the same subject matter in Section 20 of the Act of 1857. And nothing then is left but to determine the meaning of the reversion and compensation clause in the Act of 1858.

13th. That the court erred in holding that the word "it" in Section 4 of the Act of 1858 referred only to the "railroad" authorized to be built under that Act.

The search for an antecedent for "it" is prosecuted through the act in a course of reasoning, which we respectfully submit, is technical and sophistical to the limit. The antecedent for the word "it", which is to revert, for which compensation is to be made and which is found in the sentence itself is the words "the said company". This antecedent the court disposes of with a parenthetic assertion saying "as it (the said company) cannot revert to the state in any practical way." We respectfully submit that this antecedent cannot be disposed of by any such aside, and that this antecedent must be analysed and discussed and not dropped at first sight as if it were an empty shell that contained nothing to examine and consider. What was "the said company"? It was a corporation with rights in, to and upon the Canal, Basin and Bayou St. John, which rights it had acquired with legislative consent and direction. Its capital stock and funds had been invested in the enlargement, betterment and improvement of a public work, and in the purchase, by legislative direction, of the rights of its predecessors whose money had been similarly expended under a federal grant perpetual in its nature and the perpetuity of which the legislature had admitted by the provisions of the Act of 1852, and to which the State provided both

354 by the Act of 1852 and the Act of 1857, for a reversion to itself by purchase or by grant of corporate continuance. This corporation owned real estate, adjacent to this public work which might or might not be used for canal purposes. It owned tugs and barges and dredges and possibly other paraphernalia and machinery engaged in operating and maintaining said canal. At the time the right of reversion would arise the right of the company to be a legal entity would not be in existence, and therefore a non-existent right could not revert. But everything else which constituted "the said company" could revert and had a money value which could be determined by appraisalment. But the State had stipulated a reversion and compensation as to this same public work on two previous occasions, one with the purchaser under the Act of 1852, and one with this same corporation. On both of these occasions the state had stipulated for the reversion of the same thing, i. e., the public work with all the property rights of the party in said work and all the property and improvements connected therewith. By merely turning therefore to these acts in *pari materia* dealing with a right of reversion to the same thing between the same parties or the privy of one of them, it becomes as clear as the non-day sun what "it" and "the said company" mean — and that is that "it" or its antecedent "the company" means that the same property and

those same property rights belonging to the same company which had been previously agreed between the same parties should revert on compensation being made. There is no logical escape from this reasoning. No other conclusion can be reached, except to ignore the meaning of the words "the said company" and to embark on a search through other sections of the statute to find an antecedent for "it," when the true antecedent stares one in the face in the same sentence in which the relative occurs.

14th. That the court ought to have held that, under its contract with the State of Louisiana, the Carondelet Canal & Navigation
355 Company had property rights in, to and upon the canal and Bayou St. John, purchased on the faith of said contract and acquired on the faith of said contract by the expenditure of its capital stock, which property and property rights the state could not take away from it or deprive it of the enjoyment of without compensation previously made as stipulated in said contract; and that the Act No. 161 of 1906 which provides for the taking possession of said property and property rights of the defendants without any compensation whatever is a legislature impairment of said contract in violation of paragraph one of section ten of Article One of the Constitution of the United States; that while this defense is fully set up in the answer the court has not even mentioned the same in its statement of the issues of the case, but has gone on and enforced said Act of 1906 in every respect except one, i. e., the date when said act was to take effect.

15th. That the practical effect of the opinion and decree of the Court in this case is to confiscate to the use of the state the property and property rights of the defendants in, to and upon the Bayou St. John and Carondelet Canal and Basin, and the property and improvements connected therewith and appertaining thereto, purchased and constructed with the money of defendant canal company and acquired by it through its privies in title by grants from the United States, all of which is a taking by the State of Louisiana, through the instrumentality of the judgment of this court, of defendants' property without due process of law, in violation of the 14th. Amendment of the Constitution of the United States.

16th. That the court erred in not making in its decree a broader reservation as to the right of the defendants to claim as their own
and not subject to the claim of the state, real estate and other
356 property owned by the company and purchased by it or granted to it by the United States, which is not part of or appurtenant to the Canal, Basin and Bayou St. John as a public navigable highway to be administered as provided in the judgment of the court.

There was no issue in this case as to what the items of the property of the defendant were which are to revert to the state. The only question was reversion vel non, and whether the triangle was included in the right of reversion. The company owns other real estate besides this triangle, some purchased and some granted to its predecessors in title by the United States, and purchased by it from the grantee. The company also owns a tug, barges, dredges, and

other paraphernalia and property used in exploiting the canal. Does the court hold that all of this property goes to the state without compensation?

Wherefore defendants pray that a rehearing may be granted in this case and that on said rehearing the judgment and decree herein entered on June 25th. may be reversed and a final decree entered herein rejecting the demand of the State.

(Signed) FARRAR, JONAS, GOLDSBOROUGH &
GOLDBERG,

(Signed) BENJ. T. WALDO,

(Signed) SAUNDERS, DUFOUR & DUFOUR,

Atty's — Def'ts.

(Endorsed:) No. 18211. Supreme Court of Louisiana. State of Louisiana Versus Carondelet Canal & Navigation Co. Application for Rehearing. Filed July 8th, 1910. (Signed) Paul E. Mortimer, Clerk.

357 *Supplemental Petition for Rehearing.*

Supreme Court of Louisiana.

No. 18211.

STATE OF LOUISIANA
versus

CARONDELET CANAL AND NAVIGATION COMPANY OF NEW ORLEANS.

Appeal from the Civil District Court for the Parish of Orleans,
Division C, Hon. E. K. Skinner, Judge.

May It Please the Court:

In the opinion of the Court, rendered on June 25, 1910, there is quoted at great length the report of E. D. Saunders, special master in chancery, filed in the case of George G. Wheelock, etc., vs. St. Louis and San Francisco R. R. et al., No. 13244 of the docket of the United States Circuit Court, Eastern District of Louisiana, Fifth Circuit. We believe that the Court has given probative force to this master's report through error, and to the great prejudice of the defendant and appellee, and, hence, counsel deem it their duty to supplement the petition for rehearing, filed herein, with a statement of the facts as to this master's report, which, we sincerely hope, will disabuse the Court's mind of any impression that might be entertained that this report was rightfully in the record or that any weight should be attached to its contents in so far as the case at bar is concerned.

We have filed with the Clerk of this Court a certificate from the Clerk of the United States Circuit Court, of date of September 22, 1910, showing certain facts as disclosed by the docket of the Court and the record in the Wheelock case. This certificate will be found printed in full herein. By it is shown:

"(7) That on July 13, 1904, the report of E. D. Saunders, special master in chancery, was filed.

358 "(8) That on July 13, 1904, the complainant filed forty-six objections and exceptions to the master's report."

"(16) That the report of E. D. Saunders, special master, was never acted upon.

"(17) That the report of E. D. Saunders, sepecial master, was never confirmed by the Court or adopted as the basis of any decree.

"(18) That no degree or judgment was ever entered in the case."

In the petition for rehearing filed herein, in reference to this master's report, we say:

"Such a document is found in the record filed as of date February 21, 1910, the day when the lower Court handed down its decision, and such document is an unlawful and improper interpolation into the record, as it was never offered in evidence by either of the parties, as shown by the note of evidence. Therefore, this Court had no right, power or authority to examine, refer to, quote from or use the said report in deciding this case." (See note at foot of this page.)

This appeal was taken by the State. The transcript, necessarily, was made up at the State's request. Counsel knew nothing of the injection of this master's report into the transcript until after the appeal had been lodged in court.

Upon the argument of this case in the lower court, the Attorney-General, with a copy of this master's report in his hand, declared that he could not properly get it into the record. He read certain passages from the report to the lower Court, and, on making
359 an eroneous statement as to the nature of the Wheelock case, then and there had his error pointed out to him by counsel for defendant, all of whom were likewise engaged in the Wheelock case and were perfectly familiar with the issues which it involved.

We have gone to some pains to explain the matter of Judge Saunders' report in the Wheelock case, because we believe that this Court, falling into the natural error that it had been admitted as proof of its recitations, gave credence to it, which largely influenced the language of the opinion and the judgment rendered.

Respectfully submitted,

(Signed) FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG.

(Signed) BENJ. T. WALDO.

(Signed) SAUNDERS, DUFOUR & DUFOUR.

NOTE.—The Master's report in the Wheelock case was filed in the record in this case and the decision of the lower Court handed down on March 21, 1910. The date given in the text of February 21st should be March 21st, as will appear by the transcript herein.

United States Circuit Court, Eastern District of Louisiana, Fifth Circuit.

In Equity. No. 13244.

GEORGE G. WHEELOCK, etc.,

vs.

ST. LOUIS & SAN FRANCISCO R. R. Co. et al.

I, Henry J. Carter, Clerk of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, do hereby certify:

That in the matter entitled George G. Wheelock, etc., vs. St. Louis and San Francisco R. R. Co., et al, No. 13,244 of the docket of this Court the following facts are shown by the docket and record in the case, to-wit:—

1. That on May 19, 1904, the bill of the complainant was filed:
2. That on May 20, 1904, an amended and supplemental bill was filed:

3. That on May 24, 1904, a second amended and supplemental bill was filed:

4. That on June 2, 1904, the matter was referred to E. D. Saunders, Special Master in Chancery:

5. That on June 23, 1904, a third amended and supplemental bill was filed:

360 6. That on July 1, 1904, a fourth amended and supplemental bill was filed:

7. That on July 13, 1904, the report of E. D. Saunders, Special Master in Chancery, was filed:

8. That on July 13, 1904, the Complainant filed 46 objections and exceptions to the Master's report:

9. That on August 2, 1904, the answer of the New Orleans Terminal Co. was filed:

10. That on August 2, 1904, the answer of the Southern Railway Company was filed:

11. That on August 2, 1904, the answer of the St. Louis & San Francisco Railroad was filed:

12. That on August 10, 1904, the answer of the Carondelet Canal & Navigation Company was filed:

13. That on August 10, 1904, answers were filed by L. S. Berg, Ivy T. Preston, W. C. Dufour, J. V. Roca, Geo. Lhote, Victor Demoruelle, Jas. Demoruelle, and that on August 11 an answer was filed by Fritz Jahneke:

14. That on August 24, 1904, complainant filed a replication to the answer of defendants:

15. That on August 26, 1904, complainant filed replications to the answers of St. Louis & San Francisco R. R. Co., Southern Railway Co., New Orleans Terminal Co., Carondelet Canal & Navigation Co., L. S. Berg, I. T. Preston, W. C. Dufour, Geo. Lhote, J. V. Roca, F. Jahneke, Wm. Demoruelle, V. Demoruelle and Jas. Demoruelle;

16. That the report of E. D. Saunders, Special Master, was never acted upon;

17. That the report of E. D. Saunders, Special Master, was never confirmed by the Court or adopted as the basis of any decree:

18. That no degree or judgment was ever entered in the cause.
Witness, my hand and the seal of the said Court, at the City of New Orleans, Louisiana, this 22nd, day of September, A. D. 1910.

(Signed)

H. J. CARTER, *Clerk*.

By W. B. DONOVAN,

Deputy Clerk.

[SEAL.]

(Endorsed:) No. 18,211. Supreme Court of Louisiana. State of Louisiana versus, Carondelet Canal and Navigation Company of New Orleans. Supplemental petition for rehearing. Filed Sept. 28-1910. (Signed) Jean A. Klotz, Dep. Clerk.

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Rehearing Granted.

(Extract from Minutes.)

NEW ORLEANS, *Monday, October 31st, 1910.*

The Court was duly opened, pursuant to adjournment: Present their Honors: Joseph A. Breaux, Chief Justice; and Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices. Absent: Francis T. Nicholls, Associate Justice.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION CO.

A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators.

By the COURT:

It is ordered that the Rehearing applied for in this case be granted.

Called and Continued to March 30th, 1911.

(Extract from Minutes.)

NEW ORLEANS, *Friday, February 3rd, 1911.*

The Court was duly opened, pursuant to adjournment: Present their Honors: Joseph A. Breaux, Chief Justice; and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices. Absent: Francis T. Nicholls, Associate Justice.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION COMPANY.

A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators thereof.

(On Rehearing.)

This cause came on this day to be heard, but was ordered by the court to be continued until Thursday, the 30th day of March instant, in compliance with the wishes of counsel for both sides in that case.

362 *Called and Appearance Argued and Continued to March 31st, 1911.*

(Extract from Minutes.)

NEW ORLEANS, *Thursday, March 30th, 1911.*

The Court was duly opened, pursuant to adjournment: Present their Honors: Joseph A. Breaux, Chief Justice; and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION COMPANY.

A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators thereof.

(On Rehearing.)

This cause came on this day to be heard and was argued by counsel: Mr. Walter Guion, Attorney General, opened for the State, appellee; Mr. Edgar H. Farrar replied for the defendant, appellant. And the usual *usual* hour for the adjournment of the court having arrived, the Court ordered the cause to be continued until to-morrow, Friday, the 31st day of March instant, as an open case.

Called and Appearance, Argued and Submitted.

(Extract from Minutes.)

NEW ORLEANS, *Friday, March 31st, 1911.*

The Court was duly opened, pursuant to adjournment: Present their Honors: Joseph A. Breaux, Chief Justice; and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION COMPANY.

A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators thereof.

(On Rehearing.)

363 This cause, continued from yesterday, came on this day further to be heard and was argued by Mr. Walter Guion, Attorney General, for the State, Appellee. Whereupon the Court took the cause under advisement upon the briefs and papers now on file.

Final Judgment.

(Extract from Minutes.)

NEW ORLEANS, *Friday, June 30th, 1911.*

The Court was duly opened, pursuant to adjournment; Present their Honors: Joseph A. Breaux, Chief Justice; and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Somerville, Associate Justices.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION COMPANY.

(On Rehearing.)

(*Per Curiam:*)

It is ordered that the decree heretofore handed down in this cause be recast and made the final decree of the court, as follows, to-wit:

It is, therefore, ordered that the judgment appealed from be annulled, avoided and reversed, and that there now, be judgment in favor of the plaintiff, the State of Louisiana, and against the defendant, the Carondelet Canal and Navigation Co. in liquidation, herein represented by A. J. Davidson, J. H. Elliott and Hans Widmer, its liquidators, ordering the delivery, by said liquidators, to the State of Louisiana, of the waterway, known as the Carondelet Canal and Bayou St. John and Old Basin, in its entirety, as it stood on March 10, 1908, together with all the property and improvements appurtenant thereto, including the roadway, or roadways, upon the side, or sides, of said waterway. It is further ordered that whatever claims the State or the defendant may have to the triangular strip of ground described in the petition, or to the proceeds thereof,

364 or to any other property, movable or immovable, not appurtenant to the said waterway and roadways, are hereby re-

served, for further adjudication in this proceeding, with leave to the parties to amend their pleadings. It is further ordered that said defendant and said liquidators render an accounting, showing their receipts and disbursements in the management of said property since March 10th, 1908. It is further ordered that this cause be remanded to the district court for further proceedings on all questions reserved as above stated, and that the right of the plaintiff to obtain judgment for such an amount as may be found due upon defendant's accounting, and to take such further proceedings and obtain such further orders as may be required for the execution of this judgment, be reserved. It is further ordered that the defendant pay all costs.

For reasons assigned, His Honor, Mr. Justice Monroe concurs in the decree this day handed down.

For reasons assigned, His Honor, Mr. Justice Monroe concurs in decree this day handed down.

For reasons assigned, His Honor, the Chief Justice, concurs in part with, and dissents in part, from, the decree this day handed down.

For reasons assigned, His Honor, Mr. Justice Provosty, dissents.

Opinions.

Supreme Court of the State of Louisiana.

UNITED STATES OF AMERICA,
State of Louisiana:

NEW ORLEANS, *Friday, June 30th, 1911.*

The Court was duly opened, pursuant to adjournment. Present Their Honors: Joseph A. Breaux, Chief Justice; Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

His Honor Mr. Justice Monroe, (per curiam) Pronounced the opinion and judgment of the Court in the following case:

365 No. 18211.

STATE OF LOUISIANA
vs.
CARONDELET CANAL & NAVIGATION COMPANY.

On Rehearing.

FRIDAY, *June 30th, 1911.*

Per Curiam:

It is ordered that the decree heretofore handed down in this cause be recast and made the final decree of the court, as follows, to-wit:

It is, therefore, ordered that the judgment appealed from be annulled, avoided and reversed, and that there now, be judgment in

favor of the plaintiff, the State of Louisiana, and against the defendant, the Carondelet Canal and Navigation Co. in liquidation, herein represented by A. J. Davidson, J. H. Elliott and Hans Widner, its liquidators, ordering the delivery, by said liquidators, to the State of Louisiana, of the waterway, known as the Carondelet Canal and Bayou St. John and Old Basin, in its entirety as it stood on March 10, 1908, together with all the property and improvements appurtenant thereto, including the roadway, or roadways, upon the side, or sides, of said waterway. It is further ordered that whatever claims the State or the defendant, may have to the triangular strip of ground described in the petition, or to the proceeds thereof, or to any other property, movable or immovable, not appurtenant to the said waterway and roadways, are hereby reserved, for further adjudication in this proceeding, with leave to the parties to amend their pleadings. It is further ordered that said defendant and said liquidators render an accounting, showing their receipts and disbursements in the management of said property since March 10th, 1908. It is further ordered that this cause be remanded to the district court for further proceedings on all questions reserved as above stated, and that the right of the plaintiff to obtain judgment for such an amount as may be found due upon defendant's accounting, and to take such further proceedings and obtain such further orders as may be required for the execution of this judgment, be reserved. It is further ordered that the defendant pay all costs.

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Mr. Justice Monroe.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL AND NAVIGATION COMPANY.

FRIDAY, June 30, 1911.

Concurring in Decree Now Handed Down.

In the original opinion handed down in this case, it was conceded that the grammatical antecedent of the relative pronoun "it," as used in section 4, of act No. 74, of 1858, was "The Carondelet Canal and Navigation Company, of New Orleans," but, the idea that the General Assembly should contemplate the reversion to the State of the Corporation, itself, was dismissed as unworthy of serious consideration; after which, and without regard to any other rule than that which makes it the duty of a Court to endeavor, in construing a statute, to ascertain the reason and purpose of its enactment, an effort was made in that direction, and the conclusion was reached that the reason and purpose of the provision of section 4 of the act, to the effect that "it may revert to the State, upon due compensation being made" &c., were, not to repeal the provision of Section 20, of Act 160 of 1857, (that, at the end of 50 years, "the Carondelet Canal

and Bayou St. John, and all the "property and improvements connected therewith * * * may * * * become absolutely the property of the State of Louisiana, and no compensation required to be made to the corporation,") but, to provide for the possibility that the Company, acting under the franchise granted by the act of 1858, might build a railroad, and to meet the necessity of relieving such franchise of the condition, which might otherwise be applied to it, and which would be likely to destroy its value, of reverting, together with the railroad itself, to the State, at the expiration of fifty years. If that interpretation be incorrect, and we return, as

368 we must, to the grammatical meaning of the language used, we find that; whereas, only one year before, the General Assembly had declared, in unambiguous language, that, in the event of the extension of the life of the Corporation, "the Carondelet Canal and Bayou St. John, and all the property and improvements connected therewith * * * may still become, absolutely, the property of the State of Louisiana, without any compensation whatever, to the Corporation," the act of 1858, whilst relieving the Corporation of the obligation to improve the Canal, save as it might see fit, conferring on it a railroad franchise, exemption from taxation and other privileges of an extraordinary character, further provided that at the end of its corporate life, "it," the corporation, "may revert to the State, upon due compensation being made" &c., and it is now contended that, although the grammatical antecedent of the pronoun, as thus used, is the Corporation, itself, the Court should substitute therefor, "the Carondelet Canal and Bayou St. John and all the property and improvements connected therewith," and should require the State to pay the appraised value of, at least, the improvements and property connected with, or appurtenant to the Canal and bayou, as a condition to its being restored to the possession of even those public highways of commerce.

The act of 1858, however, contains no repealing clause, which is a very significant circumstance. It is admitted that it was "promoted" by the Corporation. The record in this case shows that, on the day after it was signed, the Board of Directors of the Corporation, after refusing to accept the resignation of its attorney, unanimously adopted a resolution, thanking him for the valuable services that he had rendered in the legislature in connection with the passage of the act, and I entertain no doubt that those services consisted, in part, in drawing up the act and in making it as strong in favor of the Corporation as possible. Under such circumstances and in view of the fact that the act purports to require the State to pay for something, which would, otherwise revert it without such payment, it should, be most strictly construed against the Corporation,

369 in determining what is to be paid for—the doctrine upon that subject, familiarly stated being, that: "The grant of a franchise, in so far as it is ambiguous, is to be strictly construed against the grantee, and in favor of the public, and nothing will pass unless it is granted in clear and explicit terms." Cyc. Vol. 19 p. 1459 and authorities cited. Another familiar principle is, that, repeals by implication are not favored,

and that, unless there is such conflict between a subsequent and prior law that the two cannot stand together, there is no repeal of the prior law.

Applying these principles to this case, I fail to find in the Act of 1858 any such clear and explicit grant to the Corporation as should divest the State of the right to take possession of the Canal and bayou "and all the property and improvements connected therewith," as provided in the act of 1857; and hence, I conclude that whatever may be the meaning, or intended application, of the word "it," as used in Section 4 of that act, it does not operate a repeal, by implication, of the clear and explicit stipulation, or reservation, in favor of the State, contained in Section 20 of the Act of 1857; and in my opinion, the decree, as originally entered, is no broader than is authorized by the circumstances of the case.

I however, agree with my associates that, the ends of justice will be as well subserved by the decree which is now handed down, as a substitute,

And, I, therefore, concur.

370

Mr. Justice Land, Concurring.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION COMPANY.

On Rehearing.

FRIDAY, June 30, 1911.

A reconsideration of this case has convinced me of the necessity of harmonizing, if possible, the provisions of the Acts of 1857 and 1858 relative to the property rights of the parties at the expiration of the charter of the defendant company in the year 1908. The provisions of Sec. 20 of Act No. 160 of 1857 are plain enough, but those of Sec. 4 of Act No. 74 of 1858, are so vague and uncertain as to create the greatest difficulty in ascertaining the intention of the lawmaker.

The case is fully stated in the original opinion of this Court, and its decision hinges on the construction of the sections above mentioned in the light of all the legislation on the same subject matter.

The Bayou St. John has been a navigable stream from time immemorial. The Carondelet Canal was a public work undertaken by the Spanish Governor of that name as an adjunct to the Bayou. As soon as that canal was made navigable in fact, it became a navigable stream. See *State ex rel. Lyon* (82 S. Car. 181) 17 A. & E. A. C. p. 343; *Id.* Note p. 349. The only property right that the Orleans Navigation Company and its successors had in said waterways was the franchise to collect tolls for the use of said streams and the public road on each side. The only compensation provided for the improvement of the Bayou and Canal was the right to collect tolls.

This franchise expired in 1908. It is very plain under Sec. 20 of Act 160 of 1857, that the State had the right at the expiration of the fifty years period to take possession of the Bayou and Canal and the "property and improvements connected therewith," without compensation to the Carondelet Canal Company. The road-
 371 ways on either bank were certainly connected with the waterway. Act 74 of 1858, authorized that company to construct additional improvements, including a railroad. Sec. 4 of said Act provided that the company may revert to the State upon due compensation being made. Nothing was left of the corporation at the expiration of its charter except its property, which the State had the option to take upon making due compensation. As to the Canal and the Bayou, they belonged to the public, and could form no part of the assets of the defunct corporation. As to improvements constituting an integral part of said navigable streams and property connected therewith, they were to be compensated by the franchise to levy and collect tolls. Therefore said Sec. 4 of the Act of 1858, must be held to refer to property of the corporation forming no part of said waterways in their improved condition, and not appurtenant thereto. Every presumption is against the legislative intent to waive or give away the rights of the public as fixed by Sec. 20 of the Act of 1857. It is a cardinal rule of construction that "laws in pari materia must be construed with reference to each other; what is clear in one statute may be called in aid to explain what is doubtful in another." C. C. 17, Sec. 20 of the Act of 1857 is plain enough, while Sec. 4 of the Act of 1858 is vague and uncertain in its terms. The plain intent should control the dubious intent.

I therefore concur in the decree handed down on rehearing.

372 Mr. Chief Justice Breaux.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL AND NAVIGATION COMPANY.

FRIDAY, June 30, 1911.

The canal, from the first, was valuable property.

It is a navigable stream.

Formerly the Spanish Government constructed a fort at its mouth.

Early in the history of this continent, there was a Bayou St. John and coulees and other low places connecting with it.

One of the latter was deepened and widened and made navigable. It is the southern end of the Carondelet-Canal and Navigation Company of today.

Through this canal, there was communication by water with Pensacola, Apalachian River, Mobile and other places.

Fishermen who dwelt on the shores of Lake Pontchartrain found their way to New Orleans through this Bayou and Canal.

During the last years of the Spanish Regime in Louisiana, this canal was known.

When the territory was organized, the territorial council sought to improve the channel.

It adopted a statute so that it would be an easy matter to obtain lands to extend the stream.

The United States Government, through Congress, after the State had been admitted into the Union, gave its consent to let the canal be cut through any of its public lands.

Taking up the Act 309 of '52, it is evident that the State considered the property (the navigable Canal itself) as its own. It placed it in the hands of a liquidating commissioner under said act; ordered him to take possession, advertise and sell it at public auction.

The State fixed the terms and conditions of the sale to be made under the terms and conditions laid down in said act.

373 The State by legislative act also ordered the construction of a new basin at the Junction of Carondelet-Canal and Bayou St. John, and directed in what time that and other work mentioned in the act should be done.

The statute also provided for the disposition of the property should the State redeem it at the end of twenty-five years.

All of this to be done in accordance with the legislative will expressed in said act.

The act of 1852 provided further, "that, if the said twenty-five years be granted," (referring to an additional twenty-five years) "the whole property shall revert to the State at the end of these twenty-five years, without any payment or compensation made to said company."

(Italics mine.)

It is evident that the State owned the waterway itself.

The State would not have taken the position it did about disposing of the property if it had not been considered that it owned the navigable stream.

The General Assembly provided that the State, at the end of the second term of 25 years would become the owner of the whole property, without any payment or compensation made to said company.

The liquidator, in accordance with an order of Court, and as authorized by the cited act, viz: 309 of 1852, offered all the property of the Orleans Company for sale, and sold it.

A full description of the property sold is contained in the act. It gives every detail in regard to the property, but not one word in regard to the canal or the waterway as being part of the property of defendant company.

Despite the fact that it included all other properties, all other rights, titles of the late Orleans Navigation Company as having passed to the buyer Currie, at the sale made by the Commissioner above mentioned, there is not a word to indicate that it was the intention to convey the highway itself.

374 The status quo, under the cited act of March, 1852, remained until October, 1852, at which time the New Orleans Canal & Navigation Company was organized "for the pur-

pose of making improvements upon the Carondelet-Canal and Bayou St. John, and other purposes, in accordance with a statute relating to the Orleans Navigation Company." (*Italics mine*) as stated in its charter.

Nothing is said about the waterway in this charter. In fact, nothing is said about the property. The only purpose as expressed in the charter was to operate the canal.

The canal remained in the possession of this company.

We see that nothing further was done by the Legislature for five years.

On March 16, 1857, however, the canal question was again taken up and another statute was adopted.

Again the clause about the reverting of the property after fifty years was inserted in the act; this time, in the act of 1857, "without compensation" are the words used.

Nothing is stated in the act of a price or of value of defendant's property to be paid by the State.

There is not a word about compensation in this act.

On the contrary, it is expressly stated, that, for improvements made in operating the canal there would be "no compensation made to the company by the State."

There was a complete agreement with the State under this law, and the parties bound themselves absolutely not to require compensation at the end of the term of fifty years, as will be seen by the following:

In July of 1857, the property was transferred to Currie and others.

The Carondelet-Canal and Navigation Company, the present defendant, was organized and went into possession of all the property transferred to it by Currie and others.

In these different transfers, although lands are described, there is no mention made of the transfer of the canal itself.

It could not be transferred as it was a navigable stream.

375 In the act transferring the property to the Carondelet-Canal and Navigation Company, in accordance with the requirement of the State, one-thousand shares of the capital stock, amounting to one-hundred-thousand dollars, were placed to the credit of the stockholders of the first company.

The act of '57 provided that the Carondelet-Canal and Navigation Company was to enjoy corporate existence during fifty years, after which time it was to revert to the State upon due compensation, according to the word of the commissioner. This word "it" has given rise to extended discussion. We refer to it only passing.

This was for the first twenty-five years of the charter.

With reference to the stock and other consideration mentioned, reference to the charter under which the company was organized, or the deed itself, nothing shows that it was to be secured by any property belonging to the State or that the State was in any way responsible therefor.

In the year 1858, the Legislature again took up the subject and undertook to provide for payment of property—what property is not clearly stated.

In the year '57, it was clearly stated that there was to be no compensation, but the act of '58 provided that property of the defendant may become property of the State "upon compensation being made."

It is not stated what property of the defendant.

376 There are several theories suggested by different interests, to which there is no necessity of specially referring.

It is certainly strange that Legislation is so conflicting in regard to this property. If it relates to different property, it is not so stated in the statutes.

No inventory was ever made of any of this property.

Now as to the width of the canal, not an easy question to solve:

When the canal was opened, by order of Baron Carondelet, its width all the way was to be one-hundred-fifty feet.

It is at least that width at this time.

The lines along the canal should be well known.

With reference to improvements consisting of boats, dredges, barges, they come within Act 74 of 1858, they are not merged into and do not form part of the canal and therefore and are to be acquired if the State chooses under the terms and conditions of the just cited act.

I concur in all that part of the decree condemning the defendants to deliver the Carondelet Canal and Navigation Co. to the plaintiff.

I concur in that part of the judgment which remands the cause to the District Court for trial. I also agree that reservation should be made as relates to the three thousand dollars in question and that there should be an accounting as decreed. From my point of view, if any right defendants have, should be reserved—to have it determined whether defendants should recover value of any property not forming part of or directly connected with the canal proper. Being convinced that defendants are entitled to their boats—tugs, launches—I am of the opinion that judgments should be rendered at this time recognizing their right, subject to appraisalment, to be owned by the State under the provision of Act 74 of 1858.

To the extent that the rights of defendants to the movable property in the Canal is not recognized at this time, I dissent.

377

Mr. Justice Provosty, Dissenting.

FRIDAY, June 30th, 1911.

No. 18211.

STATE OF LOUISIANA

versus

CARONDELET CANAL AND NAVIGATION COMPANY.

Appeal from the Civil District Court, Parish of Orleans, Division
"C," E. K. Skinner, Judge.

This suit is brought by the Attorney General in the name and behalf of the States against the liquidators of the Carondelet Canal and Navigation Co.

The allegations of the petition are, that the state owns the Carondelet Canal, the Bayou St. John and the Old Basin, situated in New Orleans, together with all the property and improvements connected therewith or in any wise thereto appertaining; that by Act 160 of 1857 the said corporation was chartered for twenty five years, and given possession of said canal, bayou, basin and other property, with the right to control and operate same, and receive and enjoy all the profits and benefits derivable therefrom, on the condition that should the state decide not to resume possession of said property at the expiration of said period, then that the said company should have another twenty five years of life with the same rights and privileges, and that at the expiration of the fifty years it should surrender said property to the State without any claim on its part against the state for expenses or improvements; that the said fifty years has expired, and demand has been made by the State upon said company for the surrender of said property, but that the said company sets up a contract right to retain possession and control of said property until the State should have compensated it for the expenses incurred in the improvement of said property and additions thereto, and refuses to surrender same, the said contract rights being sought to be founded upon Act 74 of 1858; that said act gives no such contract right, but that if it does it is in that respect unconstitutional, as violative of Articles 108 and 109 of the Constitution of 1852, which prohibited the granting of State aid to corporations; that the said Act 74 of 1858 does not have reference to the property of which the State now demands the surrender, but that if it does the compensation is not to be made before the surrender of said property but afterwards; that since the expiration of said fifty years the said corporation has gone on receiving the revenues from said property, and owes the State an accounting for same; that a certain piece of ground, (duly described) appertaining to said canal, has heretofore, by consent of all parties been sold for \$3,000, and said price deposited, payable to the State or to said corporation accordingly as the one or the other should be thereafter found to be entitled to it.

The prayer of the petition is that the delivery of said property and of said \$3,000 to the State be ordered to be made free of any obligation of compensation; that said Act 74 of 1858, in so far as it may serve as a basis for a claim for compensation, be decreed to be unconstitutional; that in any event, the surrender of said property be ordered to be made at once, without awaiting any settlement between the parties for compensation; and that an accounting be ordered, and for general relief.

Defendant's answer is very lengthy. It sets forth very clearly the contention of the defendant company, and contains a full history of the connection of the defendant company with Bayou St. John, Carondelet Canal and the basin.

The contention of defendant is that by virtue of an act of the legislative council of the territory of Orleans, and of several acts of the legislature of the State, and of divers acts and grants from Congress and of purchases made and expenses incurred under legislative authority, all of which acts of the State legislature have the

force and effect of contracts, it is the owner of certain rights, privileges, franchises, immunities, powers and authority in and upon and in connection with Bayou St. John, Carondelet Canal and Basin and the navigation thereof, and is the owner of certain property real and personal connected with and appertaining to said Bayou St. John, Carondelet Canal and Basin as a navigable water course, and that, while the State has under said legislative acts and contracts the right to take all of said property, the exercise of this right is by these same legislative acts and contracts subordinated to and made conditional upon compensation for same being previously made upon the basis of an appraisement to be made by experts.

I deem it unnecessary to do more than give a synopsis of the history of defendant's connection with Bayou St. John, Carondelet Canal and the Basin.

Bayou St. John is a natural stream. Barely navigable originally, it is now a fine navigable channel as the result of the efforts of defendant and those to whose rights defendant has succeeded. Carondelet Canal, when defendant's connection with it began, was a shallow ditch 15 feet wide, and nearly filled up in many places, which during the Spanish regime Baron Carondelet, Governor of the province, had caused to be dug, from Bayou St. John to near Rampart street,—across what was then supposed to be the common of the city, but which turned out later to be mostly private property,—primarily for drainage but with a prospective view to navigation. This canal is now some sixty feet wide with

380 an average depth of water of nine feet, as the result of the expenses incurred upon it by defendant and those to whose rights defendant has succeeded. The basin is at the head of the canal near Rampart Street. When defendant's connection with it began, it was a small shallow half moon, it is now a large commodious basin for commerce.

By an act of the council of the Territory of Orleans, approved July 3, 1805, a corporation was created in perpetuity, under the name of Orleans Navigation Company, for the declared purpose of "improving the inland navigation of this territory." This corporation was given the franchise "to enter into and upon all and singular the land and lands covered with water where they shall deem it proper to carry the canals and navigation hereinbefore particularly assigned, and to lay out such routes and tracks as shall be most practicable for affecting navigable canals as aforesaid." The franchise included the right to demand tolls of every boat navigating the canals of the company. That Bayou St. John and Carondelet Canal were embraced within the franchise, there can be no doubt, for the Act fixes the tolls to be charged by the company upon boats navigating them. The grant of this franchise was approved by Congress, and thereby made a federal grant. *State vs. Orleans Navigation Co.* 11 M. O. S., 309-321.

Baron Carondelet had reserved for the canal and roads on each side of it a strip of land from Bayou St. John to what is now the basin, across the common. The instrument by which this reserve was made is no longer extant; but the reserve is supposed to have

been of 150 feet. Most of the lands across which this strip was thus reserved proved not to belong to the public; so that the company had to acquire a strip of that width across these private lands by purchase from the owners.

Moreover, by Act of April 18, 1814, (U. S. Stat. at Large, Vol. 6, p. 144), and by Act of April 16, 1816, (U. S. Stat. at Large, 381 Vol. 6, p. 161), Congress granted two lots to the company; one of 180 feet on Bayou St. John by 540 feet back, and one of 300 feet on Rampart Street by 600 feet on St. Peter Street. Whether the defendant company still owns these lots the record does not show.

The company not having lived up to the requirements of its charter, in keeping the bayou and canal in a fit condition for easy navigation the charter was forfeited at the suit of the State. *State vs. Orleans Nav. Co.*, 7 An. 679.

The company had, however, expended \$375,000 in digging the basin and improving Carondelet Canal and Bayou St. John.

In anticipation of this forfeiture, the legislature passed Act 309, p. 209, of 1852. This act provided that a liquidator appointed by the Court should sell "the entire property of said company, real and personal, movable and immovable", at auction and distribute the proceeds among the stockholders; and that the purchasers might, if they wished, organize themselves into a corporation for 25 years for the purpose of improving Bayou St. John and Carondelet Canal and the Basin according to a plan mentioned in the act, and that if their corporation did this work within three years from the date of their charter, it should "be entitled to receive and exact all such tolls and revenues for the use of said canal, bayou and road, as the Orleans Navigation Co. was entitled to receive under its charter; provided, that at the end of said term of twenty-five years the State of Louisiana shall have the option either of granting to said corporation a renewal of the right of receiving said tolls for a second term of twenty-five years, or of purchasing for itself the property and improvements of the company at the appraised value thereof; and provided further, that if said second term of twenty-five years be granted, the whole property shall revert to the State of Louisiana at the end of said second term without any payment or compensation made to said company." And that in case the "work and improvement" in question be not begun within six months and completed within five years, "all the right, title and interest acquired by the said purchasers, under the provisions of this act, together with any improvements that may be made shall vest in and belong to the State."

Under the terms and provisions of the judgment of forfeiture and of said Act 309 of 1852, the liquidator of the affairs of the Orleans Navigation Company proceeded to advertise for sale and to sell at auction the following, to-wit: "all the rights, titles, claims and interest which belonged to the Orleans Navigation Company" by virtue of the act of July 3, 1805; "all the rights, titles, claims and interest belonging to said Orleans Navigation Company", by virtue of the act of Congress approved March 3, 1807, confirming to the

City of New Orleans the commons; "all the rights, titles, claims and interest which said Orleans Navigation Company may have" under the acts of Congress of February 10, 1809, and April 18, 1814; also numerous parcels of real estate. The price of the sale was \$69,000.

The purchasers organized a corporation under the name of New Orleans Canal and Navigation Co. But it becoming evident in a few years that the company would fail in its undertaking, the legislature passed Act 160, p. 159 of 1857 for the organization of another company, namely; the defendant company, to take over the property of the old company and assume its duties. The transfer of all the rights and property of the old to the new company was to be by amicable arrangement, if possible. The new company was to "arrange, adjust and liquidate the claims of the creditors" of the old company, and also those of its stockholders for moneys expended by them in and about the works and affairs of said company, 383 connected with Bayou St. John, and Carondelet Canal.

In case no amicable arrangement was effected, a forfeiture of "the charter, franchises and privileges" of the old company was to be sued for in the name of the State, and then the property of the company was to be appraised and was to be taken over by the new company at this appraisal, and was to be paid for in the stock of the new company. The said property of the old company, thus to be appraised and paid for, is described in the statute, as follows:

"The property of said company, real and personal or mixed, including the interest in the Canal Carondelet and Bayou St. John and the works and improvements done and effected thereon, and all machinery, boats, toils, implements and materials of whatever description necessary to be used in carrying on the works of the company, and real estate, acquired up to the present time, buildings and other property of said company in the City of New Orleans."

By section 10 of the article, it was provided that this new company "may and can take and receive, possess, hold and enjoy, all and singular the rights, privileges, franchises, immunities, powers and authority which were at any time granted to, received and possessed, enjoyed and exercised by the Orleans Navigation Co., and well as those exercised and enjoyed at this time by the New Orleans Canal and Navigation Co."

Section 20 of the act reads, as follows:

"That this corporation shall have existence for and during the term of twenty-five years from and after the 17th day of October next; provided that the State of Louisiana shall have the right to take possession of said Canal Carondelet and Bayou St. John, and all the property and improvements connected therewith, at the expiration of the term above mentioned, should the Legislature determine so to do, upon paying to this corporation the value of said property, 384 to be appraised by five competent persons, as experts, two to be appointed by this corporation and two by the Governor, and the four thus appointed shall appoint a fifth; said experts shall be required to take an oath to discharge their duty faithfully. In the event that the State shall not determine to take possession of said property, as herein provided, then this corporation

shall be in existence for twenty-five years from and after the expiration of the term of this section mentioned aforesaid, and at the end of such second term of twenty-five years, the said property may still become absolutely the property of the State of Louisiana, and no compensation required to be made to this corporation."

The transfer from the old to the new company took place amicably, and the affairs of the old company were fully settled.

The following year, Act 74, p. 209, of 1858, was passed, Section 1, of this act gives to the defendant "the right to construct lay-outs, basins and half-moons at any point they may deem convenient on the Bayou St. John, the Basin and Canal Carondelet", and to extend same, provided it shall furnish the public with the roads required by law along and around same.

Section 2. Gives to the defendant company, "the right to construct a railroad on either side of their basin, canal and the Bayou St. John from the head of said basin to the lake end", with the right of expropriation for said purpose.

Section 3. Makes provision for the city drainage into Bayou St. John.

Section 4. Reads as follows: "Be it further enacted, &c., That the said Company shall enjoy corporate succession during fifty years from this date; after which time it may revert to the State, upon due compensation being made according to award, by three commissioners, one appointed by the Governor of the State, one by 385 the Company, and the third by any Court of record of New Orleans."

Section 5. Relates to tonnage.

Section 6. Leaves to the good judgment of the company what works of improvement shall be done.

Section 7. Gives the power to impose fines.

Section 8. Relates to the issuance of bonds.

Section 9. Grants to the Company exemption from taxation for 50 years.

The act has no repealing clause.

From that time to this, the defendant company has had possession and control of Bayou St. John, Carondelet Canal and the Basin, and has spent large sums of money in the improvement of same.

Its charter expired on the 10th of March 1908.

The defendant admits that the State has the right to take possession of Bayou St. John, Carondelet Canal and the Basin and all property appertaining thereto, but only upon compensation previously made; this compensation to be upon the basis of an appraisement to be made by experts, as provided in Section 4 of the said Act of 1858. The defendant does not claim to be owner of the Bayou and Canal and Basin, but only to have certain rights thereon, the exact nature and extent of these rights not being an issue in this case.

The State concedes that the defendant company has succeeded to all the rights of its predecessors, but denies that it or they ever had any proprietary interest whatever in the bayou, canal and basin; and contends that under the terms of the Act of 1857, accepted by defendant company, all the property rights of the defendant com-

pany have reverted to the State without any obligation on the part of the State to make any compensation therefor.

386 Incidentally, the defendant company contends that in Sec. 4 of Act 74, p. 47 of 1858, reading: "The said company shall enjoy corporate succession during fifty years from this date; after which time it may revert to the State, upon due compensation being made," the pronoun "it," in the sentence "it shall revert," has for its antecedent "the said company," or, in other words, all the property rights of the said company; whereas, the State contends that the antecedent of said pronoun is "such lay-outs, basins and half moons and railroad," which the defendant company is authorized by said Act of 1858 to construct, and that there are none such; but that if there were any, compensation would not be due for same, because in so far as requiring such compensation to be made said statute would be unconstitutional.

In the decision heretofore handed down, and from which a rehearing has been granted, the Court found that the defendant company and its predecessors had not improved the bayou, canal and basin, and therefore had no proprietary interest in any additions to said properties by way of improvements; that while the defendant company might own some property not connected with the bayou, canal and basin, the state was not bound to take same; that the pronoun "it," in the sentence "it shall revert to the state," in Sec. 4 of the Act of 1858, had reference to a railroad which the defendant company was authorized to build but had never in fact built; and that, consequently, the State was not called upon to make any compensation whatever.

Upon further consideration of the case I have concluded that the contentions of the defendant are well founded, and should be sustained.

When the Orleans Navigation Co. took possession of Bayou St. John, the bayou was practically unnavigable; now it admits freely whatever shipping plies on the lake; the canal was a fifteen
387 foot ditch nearly filled up; now, it is sixty feet wide by an average depth of nine feet; the basin was a small insignificant affair; now, it is a commodious harbor for all the shipping on the canal and bayou. The major part of the space now occupied by the channel of the canal and the bed of the basin, was acquired by the Orleans Navigation Co. by private purchase and by grant from Congress. There can be no question but that this property, thus acquired by private purchase and by special grant, is the private property of the defendant company; nor does it seem that there could be any serious question but that the difference between the original condition of the bayou, canal and basin and the present condition is the property of the defendant company, as being the result of the labors and expenditure of funds of itself and predecessors in title.

Indeed, the question of whether the predecessors in title of the defendant company had a proprietary interest in the improvements which they had made to the Bayou, Canal and Basin, would not seem to be an open question, in view of the express and explicit

recognition of that fact in the several acts of the legislature on the subject of these companies. Thus, the act of 1852 says that at the end of 25 years the State shall have the option of granting another 25 years of charter life "or of purchasing for itself the property and improvements of the company at the appraised value thereof;" and the act of 1857 describes the property of the company as "The property of said company, real and personal or mixed, including the interest in the canal Carondelet and Bayou St. John and the works and improvements effected thereon." How, after this, can it be said that the State has not recognized that the defendant company which succeeded to all the rights of its predecessors, has a proprietary interest in the works and improvements made by it and its predecessors in title in the bayou, canal and basin. If the Act of 1858

388 had never been passed, and the State had exercised its option, under the Act of 1857, of taking possession of the bayou, canal and basin at the end of the first twenty-five years, there could have been no question whatever but that, compensation would have had to be made to the company for its property. Such are the express and explicit provisions of the Act. And there could have been no question as to what property was to be included in the compensation, for the statute itself contained a description of it, namely: "The property of said company, real and personal or mixed, including the interest in the canal and Bayou St. John and the works and improvements effected thereon." Now, these proprietary interests have not vanished, nor their status been changed, as an effect of the adoption of the Act of 1858, by which a charter life of 50 years was granted to the defendant company, and compensation was required to be made to it for its property.

I may mention, incidentally, that, from the terms of the Act of 1858, it is plain that it was expected that these proprietary interests would largely increase, as the result of further expenditures in improvements; for the new company was capitalized at \$500,000, and was expressly authorized to issue an unlimited amount of bonds, and to secure same by mortgage on all its property; and the purpose of its creation was to do the work which its predecessors, with their limited means, had been unable to do, namely: put the bayou and canal in condition suitable for the admission of all vessels plying upon Lake Pontchartrain.

389 As to anything that may have been done or said in the suit of George G. Wheelock et al. vs. St. Louis and San Francisco R. R. Co. et al. in the U. S. Circuit Court, all that need be said is that there is no evidence in the record of any such suit having ever existed, the learned attorney general having conceded that the report of E. D. Saunders, master in chancery, in that suit, which is the only evidence in the present suit of that **suit having ever existed**, got into the record of the present suit by accident, it not having been offered in evidence in this suit. Everything contained in the original opinion of the court with reference to that suit must, therefore, be considered as not written. Finding this master in chancery's report in the record, this court very naturally supposed that it was properly there as evidence; but, as a matter of fact, it is not.

Under the foregoing circumstances, it would seem to be plain that the question must not be as to whether the defendant company has or not any proprietary interest in connection with the bayou canal or basin, but that the sole question must be whether the said proprietary interest must pass to the state without compensation, under Sec. 20 the Act of 1857, or without compensation, under Section 4 of the Act of 1858.

In considering the first of these questions, nothing can be more evident than that the said Acts of 1857 and 1858 are cognate pieces of legislation, enacted for the carrying out of one and the same design. The one is entitled "An Act to incorporate the Carondelet Canal and Navigation Co. of New Orleans," and the other is entitled

"An Act relative to the Carondelet Canal and Navigation Co. 390 of New Orleans." For some reason, which can now be gathered only by inference, the act of 1857 failed of its purpose,

and a supplementary act became necessary, and the act of 1858 was passed. The manifest purpose of the second act was to strengthen the company by conferring upon it additional powers, and remedying the weak points of its organization. In place of the corporate life of 25 years, with a possible additional 25 years at the option of the State, an absolute corporate life of 50 years was given. Instead of the property of the company reverting to the State without compensation at the end of the fifty years, it was required to revert only upon compensation being made.

Section 4 of the Act of 1858 provided:

"That the said Company shall enjoy corporate succession during fifty years from this date; after which time it may revert to the State, upon due compensation being made according to award, by three commissioners, one appointed by the Governor of the State, one by the Company, and the third by any Court of Record of New Orleans."

In our former opinion we thought that the antecedent of the pronoun "it" in the sentence "it shall revert," was "the railroad" which by Section 2 of the Act the defendant Company was authorized to construct; we recognized that the obvious antecedent of this pronoun, according to the ordinary construction of language, was the word "company" just preceding the said pronoun in the compound sentence: "The said company shall" &c.; "it may revert," etc.; but we thought that inasmuch as the company could not revert to the State in any practical way the rules of language would have to be disregarded and some other antecedent sought for, and we concluded that the only possible antecedent of the said pronoun it, was the word "railroad" to be found in Section 2 of the Act.

Further consideration of the matter has led me to a different conclusion. In the first place, the French text of the act indicates that the antecedent of "it" is the word company, and not the word railroad; for the pronoun "it", in the French text of the act, is in the feminine gender, conforming in gender with the antecedent "cette compagnie"; whereas the word railroad in Sec. 2, "un chemin de fer", is masculine. In French, the gender of a pronoun unmistakably indicates the antecedent, as, indeed, is

the case in English. Take the sentence: the man and the woman entered the house; he by the main entrance, she by the side door; it would be simply impossible to extract from that sentence the meaning that the man entered by the side door, and the woman by the main entrance. The argument is equally strong in the case at bar, that the pronoun "elle" in the French text has for its antecedent the word "cette compagnie", and not "un chemin de fer".

In the second place, the legislature must have had some strong impelling motive for thus passing another act relative to the Carondelet Canal and Navigation Co. right on the heels of the act creating that company; and that motive will be sought for in vain, unless it is to be found in the purpose of prolonging the unconditional life of the company and doing away with the clause for the reversion of its property without compensation. The exemption from taxation was certainly a valuable addition to the property of the company; but the company had already an exemption for three years, and the taxation was at that time light, and exemption from it not so great a privilege as it would be in our time. The clauses granting the right to construct lay-outs, basins and half-moons and a railroad, was in reality merely confirmatory of the right already possessed by the company to construct all improvements it deemed advisable, including roads; and, besides, these additional rights could not have been considered so desirable, since they have never been availed of.

392 But the overwhelming fact in the charter of 1857 was that the corporation had only twenty-five years of corporate life, and that at the end of that time the State had the option to take all of its property invested in the canal and its improvements and appurtenances at an appraised value, or to let it live for twenty-five years more, and then take all such property for nothing, so that at the end of fifty years the company would, if it spent its capital in the canal and its improvement, lose every asset it possessed. This situation presented to the would-be investors in the stock of the company the problem: Can this company earn in fifty years a reasonable interest on its money expended in improving the canal, say its \$500,000, of capital and whatever further amount it might by sale of mortgage bonds realize, and also a sinking fund which will be sufficient in that time to replace this entire outlay? The previous history of the enterprise did not justify any such expectation. The Orleans Navigation Company had expended its whole capital stock and more in improvements on the property, and had become utterly insolvent. To realize in what condition the company and its property were, it is only necessary to read the decision of the Supreme Court in *State vs. Orleans Navigation Co.*, 7 An. 679. It will be remembered that the new company was capitalized at \$500,000, a very large capitalization at that time, and was authorized to issue an unlimited amount of bonds secured by mortgage on its property, all of which would have to revert to the State gratis. It would seem to be clear, therefore, that the stumbling block in the path of the enterprise was this reversion clause of the act of 1857, and that the purpose of the Act of 1858 was to remove it.

The reasoning of our former opinion is founded upon the im-

possibility of a corporation reverting to the State. But is that premise solid? True, the corporation, the ideal being itself, 393 separate and apart from its property rights, dies and vanishes at the expiration of its charter and therefore cannot revert; but may not its mortal remains, in other words, the property rights themselves, thus revert? Is it so great a stretch of language, after all, to say that the company shall revert, when the meaning is that all its property shall revert. The English language is much looser in its texture than the French and yet we find that in the French text this liberty of expression, if, indeed, it be such, is taken; for there can be no question whatever but that in the French text the pronoun "elle" refers to "cette compagnie" immediately preceding it, and agreeing with it in number and gender.

I think therefore, that the claim of the defendant company to compensation ought to be sustained.

Nor do I think that there is any good ground for the suggestion that the defendant company, in order to avoid the payment of taxes upon the property of which it now claims ownership, and for which it demands compensation, repeatedly, in the past, disclaimed ownership of said property, alleging that it held same merely as the lessee of the State, and that it is now estopped from setting up a claim of ownership as against the State.

The defendant company is said to have thus disclaimed ownership in the following suits: *City of New Orleans vs. Carondelet Canal and Navigation Company*, 36 An. 396; *Carondelet Canal and Nav. Co., vs. City*, 44 An. 394; *Singer vs. Carondelet Canal and Nav. Co.*, 39 An. 478.

In the first and third of these cases, the defendant company made no such disclaimer of ownership; but set up its exemption from taxation. And the same thing may be said of the second of these cases. The only question considered by the Court was whether or not this exemption included the property in question in that case, upon which payment of taxes was being demanded. The 394 pleadings in the case are not stated, and are only referred to by the Court in these general terms:

"The collection of the tax was being enforced by seizure and sale when an injunction was sued out on the grounds that plaintiffs are the lessees of the said property, and are entitled to the franchises of its predecessor, the Orleans Navigation Company, and that the property, being owned by the State, will revert to the State at the expiration of its charter."

It is not possible to say, from this, that the defendant company on that occasion disclaimed all ownership of said property. Their tenure of it is special and peculiar. This tenure may have appeared to the lawyer of the company, in that case to be a lease, and the learned attorney general himself in this case calls it a lease; but it is certainly not a lease. It is a special legislative tenure, having some of the features of a lease. In a sense, all the additions made to the bayou and canal by the defendant and its predecessors in title by way of improvements became the property of the State, as being inseparably joined to the bayou and canal which were the property

of the State, and as destined to revert to the State along with the bayou and canal. I do not discover in these decisions any grounds for estopping the defendant company from claiming to be owner of the property in question, which was acquired by it and its predecessors in title by private purchase, by grant from Congress and by the expenditure of its private funds.

I therefore respectfully dissent.

395

Assignment of Errors.

Supreme Court of Louisiana.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL AND NAVIGATION COMPANY.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes the Carondelet Canal and Navigation Company, herein represented by Hans Widmer, J. H. Elliott and A. J. Davidson, Liquidators thereof, defendant in this cause, and assigns the following errors in the judgment and decree of the Supreme Court of the State of Louisiana, rendered in this cause on June 25th, 1910, and made final as recasted by the judgment and decree on rehearing rendered June 30th, 1911, and makes this assignment part of the writ of error to the Supreme Court of the United States applied for by the said defendant, to-wit:

First. That the Supreme Court of Louisiana erred in ignoring the federal questions raised by the defendant in its answer and in its petition for a rehearing.

Second. That the Supreme Court of Louisiana erred in not holding that Act No. 160 of 1857 and Act No. 74 of 1858 constituted a contract between the State of Louisiana and the defendant company protected from impairment by paragraph one of section ten of Article One of the Constitution of the United States.

Third. That under the defendant's contract with the State, as expressed in the Act No. 160 of 1857 and the Act No. 74 of 1858, its property rights upon the Carondelet Canal, Old Basin and Bayou St. John could not be taken from it except on compensation previously made and determined, as provided in the Act of 1858; and, therefore, the Act No. 161 of 1906, which appointed a Board

of Commissioners and directed it to take possession of said property without compensation to defendant is an impairment of the obligation of defendant's contract with the State in contravention of Section Ten of Article One of the Constitution of the United States, to which last Act the Supreme Court of the State of Louisiana has, by its judgment in this cause, given full force and effect by decreeing that this defendant shall deliver to

the State the said Carondelet Canal and Bayou St. John and Old Basin, together with all the property and improvements appurtenant thereto, without compensation to the defendant.

Fourth. That it was the intent and purpose of the State of Louisiana to violate the obligation of its contract with the defendant by the passage of said Act No. 161 of the Acts of 1906, and the Supreme Court of Louisiana has, by its decisions in this cause, carried out said purpose and given full force and effect to said Act of 1906, whereby that Act is made operative and this defendant deprived of its contract rights in contravention of Section Ten of Article One of the Constitution of the United States, as aforesaid.

Fifth. That the State of Louisiana does not own and never did own the Carondelet Canal and Old Basin, but that said Carondelet Canal and Old Basin were and are the property of the United States, on which this defendant has the rights granted by the act of the Legislative Council of the Territory of Orleans of 1805, which rights it owns by a direct chain of title from the original grantee, the Orleans Navigation Company; that defendant acquired said rights with the consent of and by the Acts of the Legislature and Courts of the State of Louisiana, under the agreement and contract that it would transfer such rights and improvements made on said Canal and Basin to the State of Louisiana on compensation previously made, and that the judgment and decree of the Supreme

897 Court of Louisiana in this cause, above set forth, is a taking of defendant's property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

Sixth. That the Bayou St. John was, in 1805, at the time of the incorporation of the Orleans Navigation Company by the Legislative Council of the Territory of Orleans, a non-navigable stream in fact; that the said Legislative Council had authority under the Constitution and Laws of the United States to grant to the Orleans Navigation Company the right to enter upon and improve said stream; that when said State of Louisiana was created whatever title it got to said stream was subordinate to the Federal Grant made by the said Legislative Council to the Orleans Navigation Company that defendant is the owner of all the rights on said stream granted by the Legislative Council of said Territory to the Orleans Navigation Company by direct chain of title, obtained with the consent of and by the Act of the Legislature and the Courts of the State of Louisiana, under the agreement and contract that it would transfer such rights and the improvements made on such Bayou St. John to the State of Louisiana on compensation previously made, and that the judgment and decree of the Supreme Court of Louisiana in this cause, as above set forth, is a taking of defendant's property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

Seventh. That the Supreme Court of Louisiana erred in using against the defendant the report of the Special Master filed in the matter of Wheelock et al. versus St. Louis & San Francisco R. R. Co. No. 13244 of the Docket of the U. S. Circuit Court for the Eastern District of Louisiana, because said report was never offered

in evidence and because the said report was objected to by the parties to that litigation, and was never confirmed, the objections
 398 never having been tried and disposed of, and that the action of the Court in using said report to determine the rights of the defendant in this case is a taking of defendant's property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

Eighth. That the Supreme Court of Louisiana erred in its decree because the effect of said decree is to confiscate to the use of the State the property and property rights of the defendant in, to and upon the Bayou St. John, Carondelet Canal and Basin and the property and improvements connected therewith, and appertaining thereto, purchased and constructed with the money of defendant and acquired by it through its privies in title by grants from the United States, all of which is a taking by the State of Louisiana through the instrumentality of the judgment of the Supreme Court of the State of Louisiana of defendant's property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

Wherefore defendant prays the judgment of the Supreme Court of the United States on these assignments and prays that on due hearing the judgment of the Supreme Court of the State of Louisiana may be annulled and reversed with costs, and the judgment of the Civil District Court in and for the Parish of Orleans, rendered in the cause, be annulled and reversed, and that there be judgment ordering the dismissal of the plaintiff's suit.

And defendant will ever pray.

(Signed) FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG,

(Signed) DUFOUR & DUFOUR,

(Signed) BENJ. T. WALDO, *Att'ys.*

(Signed) EDGAR H. FARRAR, *Counsel.*

399 (Endorsed:) Filed July 8, 1911. (Signed) Paul E. Mortimer, Clerk.

Copy of Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, sitting at New Orleans, Louisiana, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Louisiana, as Plaintiff, and the Carondelet Canal & Navigation Company, represented by Hans Widmer, J. H. Elliott and A. J. Davidson, Liquidators thereof, as Defendant, wherein was drawn in question the validity of a treaty

or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States; and the decision was in favor of their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Carondelet Canal & Navigation Company as by its complaint appears. We being willing that error, if any
 400 hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of said Supreme Court, this 6th, day of July, in the year of our Lord one thousand nine hundred and eleven.

(Signed)
 [SEAL.]

H. J. CARTER,
*Clerk Circuit Court of the United States
 for the Eastern District of Louisiana.*

Order.

Allowed to operate as a supersedeas by

(Signed)

JOSEPH A. BREAUX,
Chief Justice of the Supreme Court of Louisiana.

Bond Fixed at Fifty-Five Thousand Dollars (\$55,000.00) July 6th, 1911.

(Signed)

JOS. A. BREAUX,
Chief Justice of the Supreme Court of Louisiana.

(Endorsed:) No. 18,211. Supreme Court of Louisiana. State of Louisiana vs. Carondelet Canal and Navigation Company. Copy of a writ of error lodged in the Clerk's Office of the Supreme Court of Louisiana in pursuance of the statute in such cases made and provided this 8th day of July one thousand nine hundred and eleven. (Signed) Farrar, Jonas, Goldsborough & Goldberg, (Signed) Benjamin T. Waldo. (Signed) Dufour & Dufour, Att'ys of Plaintiff in error. Filed July 8, 1911 (Signed) Paul E. Mortimer, Clerk.

401 *Bond for Writ of Error.*

Know all men by these presents, that we, Carondelet Canal & Navigation Company, as principal, and the Southwestern Surety Insurance Company, as surety, are held and firmly bound unto the State of Louisiana in the full and just sum of \$55,000.00 Fifty five thousand dollars, to be paid to the State of Louisiana, its certain attorney, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 7- day of July, in the year of our Lord one thousand nine hundred and eleven.

Whereas, lately at a term of the Supreme Court of the State of Louisiana in a suit depending in said court, between the State of Louisiana, as plaintiff, and the Carondelet Canal & Navigation Company, as defendant, a judgment was rendered against the said Carondelet Canal & Navigation Company, and the said Carondelet Canal & Navigation Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Louisiana citing and admonishing it to be and appear before the United States Supreme Court to be holden at Washington, D. C., within 30 days from the date thereof.

Now, the condition of the above obligation is such that if the said Carondelet Canal & Navigation Company, shall prosecute its writ to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

CARONDELET CANAL & NAVI-
GATION COMPANY,
HANS WIDMER,
J. H. ELLIOTT &
A. J. DAVIDSON,

Liquidators.

(Signed) By FARRAR, JONAS, GOLDS-
BOROUGH & GOLDBERG, *Attys.*
SOUTHWESTERN SURETY IN-
SURANCE CO.,

(Signed) By JOS. BAYLE, [SEAL.]
[SEAL.] *Att'y in Fact.*

Witnesses:

HENRY MOONEY,
GEORGE JANVIER.

Approved by

(Signed) JOS. A. BREAUX,
Chief Justice Supreme Court of Louisiana.

(Endorsed:) No. 18,211. Supreme Court of Louisiana. State of Louisiana vs. Carondelet Canal & Navigation Company, A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators. Bond for Writ of Error. Filed July 10, 1911. (Signed) Paul E. Mortimer, Clerk.

403 *Order of Court to Clerk to Insert Pages Stricken from Opinion of Court June 15, 1910.*

(Extract from Minutes.)

Supreme Court at Chambers.

No. 18211.

STATE OF LOUISIANA

vs.

CARONDELET CANAL & NAVIGATION Co. et als.

NEW ORLEANS, *Tuesday, July 18th, 1911.*

In preparing the opinion in this case, the Court found, occupying 25 pages of the transcript, a report by E. D. Saunders, Special Master, in the matter of Wheelock et al. vs. St. Louis & San Francisco R. R. Co., pending in the Circuit Court of the United States, to which the trial Judge, in beginning his reasons for the judgment appealed from, refers as follows, to-wit:

"The record herein contains a very elaborate history of the property to be affected in this suit. It is contained in the report of the Honorable E. D. Saunders, Special Master, in a matter lately pending in one of the United States Courts in this city."

And the information contained in the judgment from which the State, alone, appealed, appears to have been obtained, in part, from the report thus referred to. In the argument of the case, in this Court, no suggestion was made by counsel, upon either side, to the effect that the report was not properly in the record, and it was, therefore, referred to in the original opinion. In the application for re-hearing, counsel for defendant, for the first time, made the statement that the report had never been offered in evidence and was not properly in the record; and, as the statement was concurred

in by the Attorney General, it was thought advisable, by the
404 members of this Court, all the Justices concurring, that the reference to it, in the opinion originally handed down should be stricken therefrom, and omitted from said opinion, as revised for publication in the bound volume of the reports; and the action so taken was indicated by pencil lines, drawn across the pages to be stricken out. Counsel for defendant now request that the part thus stricken out, and intended to be omitted, be copied in the transcript which is to be sent to the Supreme Court of the United States, and this Court having no objection to complying with this request: It

MAPS

TOO

LARGE

FOR

FILMING

is ordered that the Clerk make the copy, as requested, together with a copy of this order.

[Endorsed on map marked page 405:] Exhibit D 2. Civil District Court, Parish of Orleans. Filed 3/9/10. (Signed) Jos. Doyle, D'y Clerk. Civil District Court. Mar. 7, 1910. Paid 30. Thomas Connell, Clerk.

[Endorsed on map marked page 406:] No. 89,798. Civil District Court, Parish of Orleans. Filed 3/9/10. (Signed) Jos. Doyle, D'y Clerk. Civil District Court. Mar. 7, 1910. Paid 30. Thomas Connell, Clerk.

(Here follow maps marked pages 405 and 406.)

407 UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, sitting at New Orleans, Louisiana, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between the State of Louisiana, as Plaintiff, and the Carondelet Canal & Navigation Company, represented by Hans Widmer, J. H. Elliott and A. J. Davidson, Liquidators thereof, as Defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States; and the decision was in favor of their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Carondelet Canal & Navigation Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of said Supreme Court, this 6th day of July, in the year of our Lord one thousand nine hundred and eleven.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern Dist. La.]

H. J. CARTER,

*Clerk Circuit Court of United States for
the Eastern District of Louisiana.*

Allowed to operate as a supersedeas by

JOS. A. BREAUX,

Chief Justice of the Supreme Court of Louisiana.

Bond fixed at fifty-five thousand dollars (\$55000.00) July 6th., 1911.

JOS. A. BREAUX,
Chief Justice of the Supreme Court of Louisiana.

[Endorsed:] Filed July 8, 1911. Paul E. Mortimer, Clerk.

408 THE UNITED STATES OF AMERICA,
Supreme Court of Louisiana:

The President of the United States to The State of Louisiana, through Jared Y. Sanders, its Governor, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, wherein the Carondelet Canal & Navigation Company, is plaintiff, and the State of Louisiana, is defendant, to show cause, if any there be, why the judgment rendered against the said Carondelet Canal & Navigation Company, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 6th day of July, in the year of our Lord one thousand nine hundred and eleven.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
*Chief Justice of the Supreme Court
of the State of Louisiana.*

[Endorsed:] No. 18,211. Supreme Court of Louisiana, State of Louisiana vs. Carondelet Canal & Navigation Co. A. J. Davidson, J. H. Elliott & Hans Widner, Liquidators. Citation. Filed July 10, 1911. Paul E. Mortimer, Clerk.

Sheriff's Return.

Filed July 10, 1911. Paul E. Mortimer, Clerk.

On this day personally appeared before the undersigned authority T. I. Galbreth, Deputy U. S. Marshal for the Eastern District of Louisiana, known to me as such, who being duly sworn declares that on the 10th day of July, 1911, he, affiant served this writ on the State of Louisiana by handing the same to the Governor thereof Hon. Jared Y. Sanders, in person, in the Grunewald Hotel, in the City of New Orleans, Louisiana.

T. I. GALBRETH,
Dep. U. S. Marshal for the Eastern Dist. of La.

CARONDELET CANAL & NAVIGATION COMPANY VS.

Sworn to and subscribed before me on this 10th day of July, 1911.

[Seal Henry J. Carter, United States Commissioner, Eastern District of Louisiana.]

H. J. CARTER,
U. S. Commissioner.

409 THE UNITED STATES OF AMERICA,
Supreme Court of Louisiana:

The President of the United States to The State of Louisiana, through Walter Guion, its Attorney General, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, wherein the Carondelet Canal & Navigation Company, is plaintiff, and the State of Louisiana, is defendant, to show cause, if any there be, why the judgment rendered against the said Carondelet Canal & Navigation Company, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable, Edward Douglass White, Chief Justice of the United States, this 6th day of July, in the year of our Lord one thousand nine hundred and eleven.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
*Chief Justice of the Supreme Court
of the State of Louisiana.*

[Endorsed:] No. 18,211. Supreme Court of Louisiana, State of Louisiana vs. Carondelet Canal & Navigation Co. A. J. Davidson, J. H. Elliott & Hans Widner, Liquidators. Citation. Filed July 10, 1911. Paul E. Mortimer, Clerk.

Sheriff's Return.

Filed July 10, 1911. Paul E. Mortimer, Clerk.

On this 10th day of July, 1911, before the undersigned authority personally appeared T. A. Pecot, Deputy U. S. Marshal for the Eastern District of Louisiana, personally known to me as such who being duly sworn deposes and says that he, affiant did on the 10th day of July, 1911, serve this writ on Walter Guion, Attorney General of the State of Louisiana by leaving the same at his office in the hands of Ruffin G. Pleasant, Assistant Attorney General of the State of Louisiana, the Attorney General, Walter Guion being absent at the time of said service.

T. A. PECOT,
Deputy U. S. Marshal for the Eastern Dist. of La.

Sworn to and subscribed before me on this 10th day of July, 1911.

[Seal Henry J. Carter, United States Commissioner, Eastern District of Louisiana.]

H. J. CARTER,
U. S. Commissioner.

410 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana do hereby certify that the foregoing four hundred and nine (409) pages contain a full, true and complete copy of the proceedings had in the Civil District Court, for the Parish of Orleans, in a certain suit wherein The State of Louisiana was plaintiff, and The Carondelet Canal & Navigation Company, A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators thereof, were defendants; and also of all the proceedings had in the Supreme Court on the appeal taken by said State of Louisiana, which appeal is now on the files thereof under the No. 18,211.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at the city of New Orleans, this the 31st day of July, Anno Domini one thousand nine hundred and eleven, and of the Independence of the United States of America, the one hundred and thirty-sixth.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER, *Clerk.*

411 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 31st day of July, A. D. 1911.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAU,.,
Chief Justice.

412 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Joseph A. Breaux, is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In witness whereof I hereunto set my hand and the seal of the Court aforesaid, at the city of New Orleans, this thirty first day of July, A. D. one thousand, nine hundred and eleven.

[Seal Supreme Court of the State of Louisiana.]

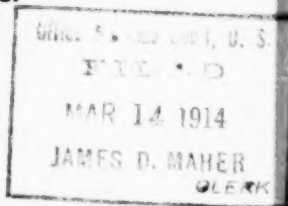
PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

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Supreme Court of the United States

OCTOBER TERM, 1913.

No. 78.



**CARONDELET CANAL AND NAVIGATION
COMPANY,**

Plaintiff in Error,

versus

THE STATE OF LOUISIANA,

Defendant in Error.

In Error to the Supreme Court of the State of Louisiana.

BRIEF IN BEHALF OF THE PLAINTIFF IN ERROR.

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2. This Court will review the findings of fact by a State Court where a conclusion of law as to a Federal right and the finding of fact are so intermingled as to make it necessary to analyze and dissect the facts for the purpose of passing on the Federal question.
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(f) If what was to revert, on due compensation made, expressed by the word "it" in the act of 1858 meant only the railroad, which was never built, and section 4 of the act of 1858 repealed Section 20 of the act of 1857, then the State had no right of reversion to, or any other right to, any of the property and improvements connected with the Basin, Canal and Bayou St. John and the roadways on the sides thereof, and the adjudging of all of this property to the State by the Supreme Court of Louisiana without compensation to the company, and executing the act of 1906, was a taking of the company's property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States; pp. 55 to 58.

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Plaintiff in Error,

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Defendant in Error.

In Error to the Supreme Court of the State of Louisiana.

BRIEF IN BEHALF OF THE PLAINTIFF IN ERROR.

PRELIMINARY.

We believe that the following propositions may be regarded as settled in this court:

FIRST. That in reviewing the final judgment of a State court upholding a State enactment alleged to be in

violation of the contract clause of the Constitution, this Court will determine for itself the existence or non-existence of the contract set up and whether its obligation has been impaired by the State enactment.

Douglas vs. Kentucky, 168 U. S. at page 502, and authorities there cited; *McGahey vs. Virginia*, 135 U. S. 662-667; *McCullough vs. Virginia*, 172 U. S., at p. 110; *Vicksburg vs. Vicksburg Waterworks Co.*, 202 U. S., at p. 467.

SECOND. That this court will review the finding of facts by a State court where a conclusion of law as to a Federal right and the finding of fact are so intermingled as to cause it to be necessary for the purpose of passing on the Federal question to analyze and dissect the facts.

Creswill vs. Knights of Pythias, 225 U. S., at p. 261, and authorities there cited; *Wood vs. Chesborough*, 228 U. S., at p. 678.

THIRD. That as a necessary corollary of these propositions, where the Federal right asserted is that the asserter of the right has been deprived by the State, whether acting through its legislature, its executive or its judiciary, of his property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States, this Court will find for itself what the claimant's property rights are of which he claims that he has been so deprived.

The assignments of error in this case are as follows:

"FIRST. That the Supreme Court of Louisiana erred in ignoring the Federal questions raised by the defendant in its answer and in its petition for a rehearing.

"SECOND. That the Supreme Court of Louisiana erred in not holding that Act No. 160 of 1857 and Act No. 74 of 1858 constituted a contract between the State of Louisiana and the defendant company protected from impairment by Paragraph 1 of Section 10 of Article 1 of the Constitution of the United States.

"THIRD. That under the defendant's contract with the State, as expressed in Act No. 160 of 1857 and the Act No. 74 of 1858, its property rights upon the Carondelet Canal, Old Basin and Bayou St. John could not be taken from it except on compensation previously made and determined, as provided in the Act of 1858; and, therefore, the Act No. 161 of 1906, which appointed a Board of Commissioners and directed it to take possession of said property without compensation to defendant, is an impairment of the obligation of defendant's contract with the State, in contravention of Section 10 of Article 1 of the Constitution of the United States, to which last act the the Supreme Court of the State of Louisiana has, by its judgment in this cause, given full force and effect by decreeing that this defendant shall deliver to the State the said Carondelet Canal and Bayou St. John and Old Basin, together with all the property and improvements appurtenant thereto, without compensation to the defendant.

"FOURTH. That it was the intent and purpose of the State of Louisiana to violate the obligation of its contract with the defendant by the passage of said Act No. 161 of the Acts of 1906, and the Supreme Court of Louisiana has, by its decisions in this cause, carried out said purpose and given full force and effect to said Act of 1906, whereby that act is made operative and this defendant deprived of its contract rights in contravention of Section 10 of Article 1 of the Constitution of the United States as aforesaid.

"FIFTH. That the State of Louisiana does not own and never did own the Carondelet Canal and Old Basin, but that said Carondelet Canal and Old Basin were and are the property of the United States on which this defendant has the rights granted by the act of the Legislative Council of the Territory of Orleans of 1805, which rights it owns by a direct chain of title from the original grantee, the Orleans Navigation Company; that defendant acquired said rights with the consent of and by the acts of the Legislature and courts of the State of Louisiana, under the agreement and contract that it would transfer such rights and improvements made on said canal and basin to the State of Louisiana on compensation previously made, and that the judgment and decree of the Supreme Court of Louisiana in this cause, above set forth, is a taking of defendant's property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

"SIXTH. That the Bayou St. John was, in 1805, at the time of the incorporation of the Orleans Navigation Company by the Legislative Council of the Territory of Orleans, a non-navigable stream in fact; that the said Legislative Council had authority under the Constitution and Laws of the United States to grant to the Orleans Navigation Company the right to enter upon and improve said stream; that when said State of Louisiana was created, whatever title it got to said stream was subordinate to the Federal grant made by the said Legislative Council to the Orleans Navigation Company; that defendant is the owner of all the rights on said stream granted by the Legislative Council of said Territory to the Orleans Navigation Company by direct chain of title, obtained with the consent of and by the act of the Legislature and the courts of the

State of Louisiana, under the agreement and contract that it would transfer such rights and the improvements made on such Bayou St. John to the State of Louisiana on compensation previously made, and that the judgment and decree of the Supreme Court of Louisiana in this cause, as above set forth, is a taking of defendant's property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

"SEVENTH. That the Supreme Court of Louisiana erred in using against the defendant the report of the Special Master filed in the matter of *Wheelock et al. vs. St. Louis & San Francisco R. R. Co.*, No. 13,244 of the docket of the United States Circuit Court for the Eastern District of Louisiana, because said report was never offered in evidence, and because the said report was objected to by the parties to that litigation, and was never confirmed, the objections never having been tried and disposed of, and that the action of the Court in using said report to determine the rights of the defendant in this case is a taking of defendant's property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

"EIGHTH. That the Supreme Court of Louisiana erred in its decree because the effect of said decree is to confiscate to the use of the State the property and property rights of the defendant in, to and upon the Bayou St. John, Carondelet Canal and Basin and the property and improvements connected therewith, and appertaining thereto, purchased and constructed with the money of defendant and acquired by it through its privies in title by grants from the United States, all of which is a taking by the State of Louisiana through the instrumentality of the judgment of the Supreme Court of the State of Louisiana of defendant's property without due

process of law, in violation of the Fourteenth Amendment of the Constitution of the United States."

From an inspection of these assignments it appears that the question of Federal right and the facts are so inextricably woven together that there must be in this court an analysis and finding of the facts.

In the Supreme Court of Louisiana the opinion of the Judge, Mr. Justice Monroe, on the original decision was largely based on the report of a Master in a case pending in a foreign tribunal which formed no part of the record. After the writ of error to this Court was taken and this improper use of this report was assigned as error, the Court ordered all reference to this report to be stricken from the opinion. (Rec., p. 262.)

On the rehearing the partially concurring and partially dissenting opinion of Chief Justice Breaux contains a statement of facts at variance with the facts as found in the original opinion, and broadly at variance with the documents and records in evidence. The two other Judges who wrote concurring opinions on the rehearing stated no facts. The dissenting opinion of Mr. Justice Provosty, rendered on the rehearing, does not concur as to the facts with the original and dominating opinion of the Court.

We shall, therefore, proceed to state the facts as established by the documents in the record and by common historical knowledge.

STATEMENT OF FACTS.

When the territory adjacent to the Mississippi River was taken possession of by the French, in the latter part

of the seventeenth century, the Bayou St. John was a narrow and shallow stream, without current, except in time of heavy rainfall or flood, a characteristic of all such bayous. It ran from a point in the rear of the spot where the City of New Orleans was afterwards located into Lake Pontchartrain, its nearest point being about a mile and a half from the river. It not only comes nearer to the river than any other bayou emptying into Lake Pontchartrain, but it breaks through a high ridge, known as the Metairie Ridge, which runs from the river to a considerable distance beyond the point where the bayou breaks through it. The main French settlements were located on the coast of the Mississippi Sound, at Biloxi, Dauphin Island, Pass Christian, Bay St. Louis and Mobile, and communication was held between these posts and the French posts in Illinois and Canada by means of canoes and pirogues. The main route was through Mississippi Sound, Lake Borgne, Lake Pontchartrain and the Bayou St. John, thence by a portage to the Mississippi River, and up the Mississippi River. The old Bayou Road still subsists in New Orleans, showing the trail over which this portage was conducted. There was another route, all by water, which continued up through Lake Pontchartrain, through Lake Maurepas, and thence by Bayou Manchac to the Mississippi River, just below Baton Rouge. In August, 1718, the French Governor Bienville moved his headquarters from Mobile, where it was then established, and founded the City of New Orleans on the Mississippi River at the end of the old Bayou St. John portage. No attempt was ever made to improve the Bayou St. John. There was, as is the case with all such bayous, a bar across the mouth, which even small schooners could pass only in high water. In Spanish times a fort was built at the mouth of the bayou,

because it afforded an access to the City of New Orleans. That old fort still stands, and was maintained by the United States until 1831, when it was abandoned and sold. During French and Spanish times the bayou was navigable as far up as "the settlement at the bayou," located where the portage trail struck the bayou, and where a bridge was built, called the "bayou bridge"; but this navigation was possible only to canoes, pirogues, chalans (small, flat-bottomed boats built with square sides and ends), and, in time of high tides, by small schooners.

In 1794, seventy-six years after the founding of the City of New Orleans, Louisiana being then a Spanish colony belonging to the Crown of Spain, the Baron de Carondelet, the Royal Governor, laid off a strip of land extending from Bayou St. John to a point adjacent to the ramparts of the City of New Orleans for the purpose of digging a canal to connect the city through Bayou St. John with Lake Pontchartrain. (1 Martin La. Rep. (O. S.) 23; same case continued to 2 Martin La. Rep. (O. S.) 214.) This strip was 150 feet wide, French measure, and was supposed to be laid off through property belonging to the Crown, but, as a matter of fact, most of the property through which the strip was laid off did not belong to the Crown, as the Crown had previously made grants of it to private individuals. (See ancient map of "Confirmation," Exhibit D-I, bound in transcript between page 60 and page 61.) Through the center of this strip of ground there was dug by the Baron de Carondelet, with the aid of slave labor furnished by the inhabitants, a canal or ditch fifteen feet wide (2 Martin La. Rep. (O. S.) 37), intended both for the purpose of navigation and drainage. (2 Martin La. Rep. (O. S.) 10.) The Bayou St. John was at that time practically a non-naviga-

ble stream, except for skiffs and pirogues. (See testimony of witnesses in *State vs. Orleans Navigation Company*, 11 Martin La. Rep. 107-115: Louis Blanc, p. 107; Louis Allard, p. 108; Guillaume Benite, p. 110; Judge Pitot, p. 111; Joseph Rabassa, p. 112; J. H. Holland, p. 114; see, also, this transcript, Exhibit D6—to wit: Jose Pycharaca, p. 149 *et seq.*; Vincent Rilleux, p. 153; Alexis Rochou, p. 154; Alexander Milne, p. 154; Pierre Baam, p. 155; Paul Lanusse, p. 156; Guillaume Benite, p. 159; Louis Allard, p. 158; Louis Blanc, p. 156; James Pitot, p. 160; Joseph Ravassa, p. 161; J. H. Holland, p. 162; Etienne Roquigny, p. 157; see, also, opinion of Supreme Court of Louisiana in *Carondelet Canal and Navigation Company vs. Parker*, 29 La. An. 434.)

Because of the drainage of the City of New Orleans into it, the Carondelet Canal was in 1805 useless for any purpose of navigation. The language of Section 9 of the act of the Territorial Council of the Territory of Orleans, approved July 3, 1805, and entitled "An act for improving the inland navigation of the Territory of Orleans," and which act incorporated the Orleans Navigation Company, and by which the Territorial Council vested the canal and bayou in that corporation, plainly shows that there was less than three feet of water in that canal at that time. Witnesses in the case of *State vs. Orleans Navigation Company* (Exhibit D6 and 11 Martin La. Rep. 107-115) all agree that the canal was practically useless. Pierre Baam (Exhibit D6, Tr., p. 155) says that "this canal and basin did not last long; that the canal got filled up by cattle passing it." Paul Lanusse (Exhibit D6, Tr., p. 156) says that in the year 1805 it was the duty of witness, as a member of the navigation company, to sound the canal and bayou, and that witness found them both in a very bad state, and not at all naviga-

ble; that the canal at low water was nearly filled up. Louis Allard (Exhibit D6, Tr., p. 158) says that at the time of witness' arrival in this country from France, although the Canal Carondelet was very recently finished, it was, however, even at that time, so obstructed that only very few of the smaller sort of vessels entered it for fear of being left by the fall of the water, and not being able to get out; that at the time of the cession of this country to the United States this canal was so much abandoned that even in high water the number of vessels which entered it was so small as hardly to be worth mentioning. James Pitot (Exhibit D6, Tr., p. 160) says that in the year 1796 there were two or three small schooners in the basin of the canal, but it was so filled up that they remained there two or three years before they could get out; that the navigation of the canal had entirely ceased except in extraordinary high water.

As neither Bayou St. John nor the Canal Carondelet was navigable or fit for the uses of commerce at that time, the Territorial Council of the Territory of Orleans, which was the representative of the United States in the Territory of Orleans, by an act entitled "An act for improving the inland navigation of the Territory of Orleans" (and contained in Chapter 1 of the Acts of the Legislative Council of the Territory of Orleans for the year 1805, and copied in the appendix to this brief), incorporated the "Orleans Navigation Company," and, without limit of time as to its charter, vested in this corporation the right of entering upon and improving the Carondelet Canal and Bayou St. John, and of collecting tolls from those using the improved waterway.

The act of Territorial Council of the Territory of Orleans was tacitly approved and acquiesced in by act of Congress approved February 10, 1809 (Statutes at Large, Vol.

2, p. 517); by act of Congress approved March 3, 1807 (Statutes at Large, Vol. 2, p. 440); by act of Congress approved April 18, 1814 (Statutes at Large, Vol. 6, p. 144); by act of Congress approved April 16, 1816 (Statutes at Large, Vol. 6, p. 161). (See Tr., p. 28 *et seq.*) No stronger ratification of the act of the Territorial Council was possible, since the acts of Congress referred to are all grants or confirmations to the Orleans Navigation Company. This point was ruled upon by the Supreme Court of Louisiana in *State vs. Orleans Navigation Company*, 11 Martin La. Rep. 320 *et seq.*, and also in the *Parker case*, 29 An. 430.

As the line of the Carondelet Canal as laid out by the Baron de Carondelet was not, as Baron de Carondelet had erroneously supposed, through Crown, or public lands; and since the lands through which the canal passed were the property of private individuals (for the names of these owners and the confirmations of lands to them, see transcript, pp. 30-32), it became necessary for the company to acquire from these individuals the lands occupied by the canal and required for its widening. The company acquired such lands from Daniel Clark, F. J. Lebreton Dorgenois, Domingo Fleitas, Dame Louise de la Ronde, widow of Castillion, and the free woman of color, Marie Michel, by act before Stephen de Quinones, Notary Public, on July 8, 1811 (Exhibit D-3, Tr., p. 62), and from Jean Marie Griffon, Marie Thomas Susanne Griffon and Marie Francois Griffon, the heirs of Charles Griffon, by act before J. R. Stringer, Notary Public, on January 16, 1828. (Exhibit D-5, Tr., p. 64.) By reference to the second printed copy of the map of the Sulakowski survey bound, in the back of this transcript (preceding page 263), and the notations thereon, the Court will observe that the company was under the necessity of acquiring from the then owners (as shown

in Exhibits D-3 and D-5) all of that part of the line of the canal from within a few hundred feet of what is now Claiborne Street, in the present city of New Orleans, out to the Bayou St. John and along and down that bayou to what is now Orleans Street, in that city. If that part of the line of the canal lying between the old ramparts of the city and the part where the company's purchase of land began had not vested in the company previously and by the act of July 3, 1805, when title thereto was still in the Federal Government, at any rate the company had possession of it in 1812, and it had been confirmed to the company by the same act of Congress which confirmed to the city of New Orleans the commons, which is act of Congress of March 3, 1807 (Statutes at Large, Vol. 2, p. 440). The property called the Old Basin was the former site of the Charity Hospital (see Exhibit D-1, Tr., p. 60) and was granted to the company by act of Congress approved April 16, 1816 (Statutes at Large, Vol. 6, p. 161). Even a cursory inspection of the copy of the map of the Sulakowski survey (the last exhibit bound in the transcript, for there are two copies of the same map bound in the transcript) and a reference to the confirmations noted thereon (to be found in full at pages 30 to 32 of the transcript), and a glance at the acts of Congress as offered in evidence and above referred to, together with the Exhibits D-3, and D-5, will show exclusively "that all that certain property known as the Carondelet Canal" and "as "The Old Basin," which the State of Louisiana sets up it "owns and is entitled to possess, control, manage and administer, to the exclusion of all others," passed directly either from private ownership or from the United States to the company, and that all but a small part of this property had so passed from private ownership, or from the United States, to the com-

pany before Louisiana was erected into a State in 1812. That part of the property known as the Carondelet Canal and the Old Basin, which had not so passed from private ownership or from the United States to the company before Louisiana was admitted to the Union, the company acquired in 1828 from the heirs of Griffon *et al.* (Exhibits D-3 and D-5), and from the United States, when it acquired the Charity Hospital site in 1816 by act of Congress (Statutes at Large, Vol. 6, p. 161), which site was used to enlarge the Old Basin.

Up to November 15, 1821, the company expended \$143,-490.39 upon work done in the canal and bayou and basin, and \$28,633.08 in the purchase of land. (Exhibit D-6, Tr., pp. 165, 166.) It would also appear that \$2,276.10 had been paid in taxes to the State of Louisiana. (Exhibit D-6, Tr., pp. 165, 166.) Ultimately the whole capital stock of the company, \$200,000 and \$175,000 in excess of the capital stock, or \$375,000, was expended in the digging of the Old Basin and in improving the Carondelet Canal and Bayou St. John.

In 1821 the State brought a suit to forfeit the charter of the Orleans Navigation Company (Exhibit D-6, Tr., p. 136), and in this suit the State attempted to maintain the position that the title to the property which the State now claims to own was in the United States, and that the Orleans Navigation Company had no rights thereon. (11 Martin, La. Rep. [O. S.], pp. 89, 91, 93, et seq.) The State was unsuccessful in this attempt, and the charter and all of the rights of the company were upheld by the Supreme Court. (11 Martin, La. Rep. [O. S.] 309.)

In 1852 the Orleans Navigation Company became insolvent, and its charter was judicially forfeited. (*State vs. Orleans Navigation Company*, 7 La. An. Rep. 679.)

In anticipation of the rendition of the decree of forfeiture by the Supreme Court of Louisiana, the Legislature enacted Act No. 309 of 1852, copied in full in the appendix, entitled "An act relative to the Orleans Navigation Company, the Bayou St. John, and the Canal Carondelet." This act provided for the appointment of a liquidator by the court in which the suit was instituted; and defined the manner in which the affairs of the corporation were to be liquidated. The liquidator was directed to take possession of the entire property of said company, real and personal, moveable and immoveable, and to advertise and sell the same *in block*, at public auction, after sixty days advertisement, to the highest bidder, payable one-tenth in cash and the remainder in equal annual installments from one to twenty years. The credit portion of the price to be paid for in bonds bearing legal interest, and secured by mortgage and vendor's privilege on the property sold.

The tolls accruing in the hands of the liquidator in the interval between his taking possession of the property and the sale were to be received and distributed as part of the estate of the insolvent company.

It was further provided that it should be a condition of said sale that if the purchasers shall organize themselves into a corporation under the laws of this State for a term of twenty-five years, for the purpose of carrying out and effecting all the improvements detailed and described in the reports and plans known as Harrison's Reports and Plans, including the construction of a new basin at the junction of Canal Carondelet and Bayou St. John, etc., and shall actually complete and effect all such improvements within the term of three years from the date of their charter, then the said corporation shall be entitled to receive and exact all such tolls and revenues for the use of said canal,

bayou and road, as the Orleans Navigation Company was entitled to receive under its charter.

It was further provided that at the end of the term of twenty-five years, the life of said corporation, the State of Louisiana should have the option either of granting to said corporation a renewal of the right of receiving said tolls for a second term of twenty-five years, or of purchasing for itself *the property and improvements of the company* at the appraised value thereof; and provided further that if said second term of twenty-five years be granted, *the whole property* shall revert to the State of Louisiana at the end of said second term, without any payment or compensation made to said company.

It was further provided that if the works and improvements to be made by the purchaser be not begun within six months and completed within five years, all the right, title and interest acquired by said purchaser under the provisions of the act, together with any improvements that may be made, shall vest in and belong to the State.

Under the terms and provisions of the judgment of forfeiture (7 La. An. Rep. 679) and Act 309 of 1852, Jacob S. Halsey was appointed liquidator for the affairs of the Orleans Navigation Company, and, under the orders of the late Fifth District Court, Halsey proceeded to sell:

FIRST. All the rights, titles, claims and interest which belong to the said Orleans Navigation Company by virtue of its charter, resulting from an act enacted by the Governor of the Territory of Orleans, by and with the advice and consent of the Legislative Council thereof, approved on the 3rd day of July, 1805, etc. * * * which rights, titles, claims and interest, for the purposes in said charter mentioned, specified and determined, *extend to and upon the canal* known under the appellation of Caron-

delet Canal, beginning from and including the Basin Carondelet, in Basin Street, and running to the bayou called the Bayou St. John; and also to and upon the said Bayou St. John, beginning from the point of its intersection with the said Canal Carondelet and continuing down the same to the Lake Pontchartrain; and also to and upon the roads running and situate upon each side of the said bayou from its junction with the Canal Carondelet to said Lake Pontchartrain; *and to and upon all and singular* the dependencies and accessories of said basin, canal or bayou, of whatever kind, nature or denomination the same may be.

SECOND. All of the right, title, claims and interest belonging to the Orleans Navigation Company, by virtue of the third section of the act of Congress approved March 3, 1807.

THIRD. All of the right, title, claims and interest which the Orleans Navigation Company may have in and to the effects of the provisions of the second section of the act of Congress approved February 10, 1809.

FOURTH. All and singular a certain lot of ground granted to the Orleans Navigation Company by an act of Congress approved the 18th day of April, 1814.

FIFTH. All and singular the rights of the Orleans Navigation Company to a large number of specific pieces of real estate, most of which form part of the grant made to the Orleans Navigation Company by the act of Congress of 1816.

The sale of the property at public auction took place on June 28, 1852 (Tr., p. 41), and James Currie, of New York (Tr., p. 42), was the purchaser, for the price of \$69,000 (Tr., p. 45), which, under Section 1 of Act 309 of

1852, was payable one-tenth cash and the balance in twenty yearly installments of \$3,105 each, with interest (Tr., p. 45) secured by mortgage on the property sold.

The sale by Hasley to Currie before Richard Brennan, Notary, on June 28, 1852 (Exhibit X-1, Tr., pp. 41-47), recites:

"To have and to hold the said basin, canal, bayou, roads and other properties, hereinbefore described, unto the said purchaser, his heirs and assigns, to their proper use and behoof forever [Exhibit X-1, Tr., p. 67]; and to secure the bonds given for the deferred payments, he (the said Mr. Currie) does hereby specially mortgage, hypothecate and effect to and in favor of the said Mr. Halsey, Liquidating Commissioner as aforesaid, who also retains the vendor's privilege on the same, or unto any person or persons whomsoever the lawful holder or holders of the said bonds, the property hereinbefore described and sold, promising not to alienate, deteriorate or in any manner whatsoever incumber the same, or any part thereof, to the prejudice of this mortgage." (Tr., p. 45.)

The purchasers, Currie and others, proceeded to organize a corporation named the New Orleans Canal and Navigation Company (Exhibit X-2, Tr., pp. 47-57), and to it, on October 26, 1852, by act before Richard Brennan, Notary (Exhibit D-7, Tr., pp. 67-74), Currie and his associates transferred the property which had been acquired by Currie from Halsey, Liquidating Commissioner of the Orleans Navigation Company. The description of the property and the wording of the two acts of sale by Halsey to Currie, and by Currie and others to the New Orleans Canal and Navigation Company, are identical, as a comparison of the Exhibits X-1 and D-7 will show. The New Orleans

Canal and Navigation Company assumed the bonds which had been given by Currie as part of the purchase price of the property. (Tr., p. 72.)

Evidently realizing the inability of the New Orleans Canal and Navigation Company to carry out the terms of the purchase of the property as fixed in Act 309 of 1852, the Legislature enacted Act 160 of 1857, which was approved on March 16th of that year, and which incorporates the Carondelet Canal and Navigation Company. (Acts of Louisiana of 1857, p. 143, copied in full in the appendix.) This act empowers the Carondelet Canal and Navigation Company, which hereinafter we will call the Canal Company, to enter upon and take possession and control of the Carondelet Canal and Bayou St. John, for the purpose of completing the works undertaken by the New Orleans Canal and Navigation Company, should the latter company fail to perform what the Act 309 of 1852 required of it; the Canal Company to adjust and liquidate the claims of the creditors and of the stockholders of the New Orleans Canal and Navigation Company for money expended by them in connection with the works of that company. Under Section 4 of this act, in the event of the default of the New Orleans Canal and Navigation Company to carry out the act of 1852,

*"the property of said company, real, personal and mixed, including the interest in the Canal Carondelet and Bayou St. John, and the work and improvements done and effected thereon, * * * shall be appraised at the true value thereof by four appraisers."*

By Section 5 of the act it is provided that the debtors of the New Orleans Canal and Navigation Company shall receive the amount of their claims in the stock of the Canal Company, or in cash. By Section 20 of the act it is provided

that the Canal Company shall have existence for twenty-five years from October 17, 1857, subject to the State taking possession of the property and paying the Canal Company the value thereof, as determined by five experts; or, should the State determine not to take the property over at the end of twenty-five years, then the company shall have existence for an additional twenty-five years, at the expiration of which second term the property may become the property of the State, "and no compensation required to be made to this corporation."

By Section 10 of the act the Canal Company was given all the rights, privileges, franchises, immunities, powers and authorities granted to the Orleans Navigation Company by Sections 9, 10, 11, 12 and 13 of the Act of 1805, "as well as those exercised and enjoyed at this time" by the New Orleans Canal and Navigation Company by Act 309 of 1852. By the same section the commissioners charged with the organization of the Canal Company were authorized to compromise with the New Orleans Canal and Navigation Company, by which compromise the latter should transfer to the new company all their rights and privileges prior to that time, when, under their charter, a forfeiture of their privileges might accrue.

The new Canal Company was exempted from taxation for three years from the date of the act "on said canal and Bayou St. John," a privilege which none of its predecessors had enjoyed. The company was further given authority to mortgage "said canal, and any work or property by them possessed, and to issue bonds to that effect."

Under this section a compromise was arranged between the commissioners. The old company and the new company assumed the bonds given for the purchase price, and issued

1,000 shares of its stock, full paid and not subject to assessment. The old company transferred all of its property and rights to the new company. (Exhibit X3, Tr., pp. 52-57.)

The Legislature, by Section 4 of the Act of 1857, recognized the rights of the old company for which it was entitled to the appraised value, even in the event of forfeiture, to be inclusive

“of the interest in the Canal Carondelet and Bayou St. John, and the works and improvements done and effected thereon, and all machinery, boats, tools, implements and materials of whatsoever description necessary to be used in carrying on the works of the company, and real estate acquired up to the present time, buildings and property of said company in the City of New Orleans.”

Acts of Louisiana of 1857, p. 144.

Both the State of Louisiana and the incorporators, under Act 160 of 1857, found it impossible under the terms of this act to raise the capital to carry out the provisions of this act, the objection being to the clause of Section 20, that at the end of fifty years (*i. e.*, the second term of twenty-five years) the property should go to the State without any compensation to the company. (See Exhibit D9, Tr., p. 133; testimony of the late Louis Gagnet, given in 1883; also the finding of the Supreme Court of Louisiana in *City of New Orleans vs. Carondelet Canal and Navigation Company*, 36 La. An. 396, to the effect that “in view of the subsequent embarrassed condition of the company, and in apprehension of a discontinuation and abandonment of the undertaking and consequent public calamity, the Legislature in 1858 passed,” etc.; also, Exhibit D 14, Tr., pp. 80, 116; also, Exhibit D15, Tr., pp. 80, 81.)

Only \$20,540 of the whole capital stock of the company could be raised under the act of 1857. The balance was raised under the act of 1858. (Testimony of W. P. Nicholls, Tr., p. 39; Exhibit D17, Tr., p. 82.)

Therefore, the Legislature of Louisiana in 1858 adopted Act 74 of that year (Acts of Louisiana, p. 46), giving the Carondelet Canal and Navigation Company additional grants.

Section 4 of Act 74 of 1858 provides that the company shall enjoy corporate succession during fifty years from the date of the act (March 10, 1858), after which time it may revert to the State upon due compensation being made, according to award by three commissioners, one appointed by the Governor, one by the company, and the third by any court of record in New Orleans. (Acts of Louisiana of 1858, p. 47.)

The Court's attention at this time is called to the fact that in none of the legislation relative to the several canal companies does the State claim any right, title or ownership in and to the Canal Carondelet, Bayou St. John and Old Basin, or the improvements therein.

It was admitted by the Attorney-General in argument in the case of *State vs. Orleans Navigation Company*, 11 Martin, La. Rep. (O. S.) 99-100, that, even if a forfeiture of the charter of that company should be decreed, it must be compensated for its property.

The Act of 1852, which was passed in anticipation of the secondly applied for forfeiture, clearly safeguarded the property rights of the corporation which was to be ousted of its corporate capacity by such judgment; and even provided that the tolls to be collected by the liquidator in the interval between his possession of and the sale of all the property and

rights of the forfeited company should belong to the creditors and stockholders of that company.

The same care was taken by the act of 1857 to safeguard the rights of the stockholders and the creditors of the New Orleans Canal and Navigation Company, in case it failed to comply with its charter, and among the rights enumerated were

“the interest in the Canal Carondelet and Bayou St. John, and the works and improvements done and effected thereon.”

This property was taxed as private property from 1805 down to the act of 1857, when a three-year exemption “on the canal and Bayou St. John” was granted. By Act 74 of 1858, this exemption was made perpetual.

The only right the State ever asserted to this property prior to this suit was the reversionary right established by the act of 1852, modified by the act of 1857, and further modified by the act of 1858.

On July 3, 1857, by act before Eusebe Bouny, notary public (Exhibit X3, Tr., p. 52), a compromise and transfer of property was effected between the New Orleans Canal and Navigation Company and the Carondelet Canal and Navigation Company, by which all of the property and rights bought by Currie from Halsey, and from Currie by the New Orleans Canal and Navigation Company, were transferred by the New Orleans Canal and Navigation Company to the Carondelet Canal and Navigation Company. (Tr., pp. 52-57.) The consideration paid by the Carondelet Canal and Navigation Company was \$149,608—that is, \$100,000 in the stock of the Carondelet Canal and Navigation Company (Tr., p. 56), and the assumption of the \$49,608 and interest due by the New Orleans Canal and

Navigation Company on account of its purchase from Currie, and Currie's purchase from Halsey (Tr., p. 56.)

In addition to the \$149,609 mentioned in the preceding paragraph, the company, in improving the Carondelet Canal, Bayou St. John and Old Basin, has expended \$294,932.96, a total outlay by the Carondelet Canal and Navigation Company of \$444,541.96. (Exhibit D16, Tr., p. 118.)

It has not been pretended in this case or elsewhere that the State of Louisiana has, directly or indirectly, spent a dollar on the canal, bayou or the basin for any purpose whatsoever.

In 1884, by Act 86 of that year (Acts of Louisiana of 1884, p. 113), the Legislature passed "An act to repeal Act 160, entitled 'An act to incorporate the Carondelet Canal and Navigation Company of New Orleans,' approved March 16, 1857; also, to repeal Act 74, entitled 'An act relative to the Carondelet Canal and Navigation Company, of New Orleans,' approved March 10, 1858; also, to authorize the Governor to appoint experts to appraise the property of the Carondelet Canal and Navigation Company; also, to direct the Governor to take possession of the Bayou St. John and Canal Carondelet, and to appoint commissioners for the same."

In the case of *Carondelet Canal and Navigation Company vs. Tedesco*, 37 La. An. 100, the Canal Company sued for tolls due it, and the defendant set up that, by reason of Act 86 of Louisiana of 1884, the rights of the Canal Company were extinct. The Supreme Court of Louisiana, in passing upon the matter, held that the Canal Company's "charter possesses all of the features of a contract is so patent on the face of the acts granting the same as not to admit of dispute," and proceeded to give judgment for the Canal Company, and to hold Act 86 of 1884 unconstitutional.

On March 10, 1908, the date of the expiration of the Canal Company's charter under Act 74 of 1858, the stockholders of the company held a meeting, at which 1,743 out of a total of 2,160 shares were represented. At this meeting A. J. Davidson, Hans Widmer and J. H. Elliott were elected liquidating commissioners (Exhibit D10, Tr., p. 75), and Philip Werlein was selected as the company's commissioner to fix the compensation and award under Section 4 of Act 74 of 1858. (Exhibit D11, Tr., p. 76.) On March 10, 1908, the attorney for the company addressed a letter to the Governor of the State (Exhibit D12, Tr., p. 76), notifying him of the election of liquidators and of the selection of Mr. Werlein to represent the company in the appraisal, asking the Governor to appoint the appraiser in behalf of the State, and requesting the Governor to direct the Attorney-General to join the liquidators in applying to the Civil District Court for the appointment of the third appraiser. No answer, other than an acknowledgment of the letter, has been received by the liquidators, and on March 5, 1909 (Exhibit E7, Tr., p. 57), a peremptory demand was made upon the liquidators by the Attorney-General to turn over the property, without compensation, to a "Board of Control for the Bayou St. John and Carondelet Canal and Old Basin," appointed under the provisions of Act 161 of 1906. To this demand the attorneys for the liquidators returned the answer (Exhibit X8, Tr., p. 59) that,

"whenever the State complies with her contract obligations with the Carondelet Canal and Navigation Company, as declared in Section 4 of Act 74 of 1858, the liquidators will be pleased to comply with the demand to deliver the canal property to the representatives of the State."

It will be observed that the present suit was filed on May 19, 1909, or fourteen months after the expiration of the charter terms of the act of 1858.

If the Legislature of the State of Louisiana ever gave the Attorney-General the right to bring this suit, in which he seeks to have annulled a legislative act under which the State and the Canal Company have acted for fifty years, and in which the solemn obligations of a contract and vested rights are ruthlessly, recklessly and wantonly attacked, a search of the acts of the Legislature fails to disclose the same, and the record shows, as the only authority pretended for this suit, the letter of the Governor to the Attorney-General. (Tr., p. 10.)

By Act 161 of Louisiana of 1906, providing for the appointment of a Board of Control for the Carondelet Canal, Bayou St. John and Old Basin, the State elected to take over the property; but the act does not expressly provide for any compensation to the Canal Company.

No attempt was ever made to enforce this act until this suit was brought.

It was brought in the name of the State by the Attorney-General, on the direction of the Governor.

It is distinctly a suit to enforce and carry out the provisions of that act—the very act which defendant claims and maintains impairs the obligations of its contract.

THE PLEADINGS.

The substance of the petition is (Rec., p. 2) :

FIRST. That the State owns and is entitled to possess, control, manage and administer, to the exclusion of all others, for the use of the public, all that certain property

known as the Carondelet Canal, Bayou St. John and the Old Basin, in the Parish of Orleans, *together with all the property and improvements connected therewith, or in any wise thereto belonging and appertaining.*

SECOND. That the same are now, and have been for many years, managed and operated by the Carondelet Canal and Navigation Company, a corporation created by Act No. 160 of the Acts of 1857.

THIRD. That by said act the corporation was given an existence of twenty-five years from October 17, 1857, and it was provided that, in event the State should determine not to take possession of said property at the expiration of said twenty-five years, said corporation should have a further existence of twenty-five years more after the expiration of the first term of twenty-five years, thus making fifty years as the term of corporate existence, and as the term during which it might possess and control the property, it being declared by said Act No. 160 of 1857, and as a consideration for its corporate existence and the benefits and privileges conferred upon said corporation, that at the expiration of the fifty years all of said property would be surrendered to the State without any claim on it by the corporation.

FOURTH. That, in order that the State might be in a position to assume and take control, management and administration of the said property at the expiration of the time during which the corporation had the right to possess and manage it, the Legislature of the State adopted Act No. 161 of the Acts of 1906, and by said act provided for the appointment of a board of five members with power to control and manage the canal, and that the Governor had

appointed said board, which is ready and prepared to assume the control and management of the property.

FIFTH. That, notwithstanding the fact that the term for which the corporation had the right to hold and control the property has long since terminated, it continues to hold the same without legal right, and refuses to deliver the same to the State, and to allow the State to take possession of the same through the board appointed by the Governor, although due demand has been made upon the corporation.

SIXTH. That the ground set up by the corporation for this refusal to deliver the property is that the State had not complied with certain alleged contract obligations to the company, claimed to have been undertaken by the State by Section 4 of Act No. 74 of the Acts of the Legislature of 1858.

SEVENTH. That by virtue of the provisions of Section 20 of Act 160 of 1857 there is no obligation whatever resting on the State to pay the corporation for the property demanded, or for any part thereof.

EIGHTH. That there is nothing contained in Section 4 of Act 74 of 1858, or any part of said act, which imposes on the State any obligation to pay for the property and improvements, or for anything connected with or belonging to or appertaining to said Carondelet Canal, Bayou St. John and Old Basin on the State's taking possession of the same, but that, if there be contained in said act of 1858 anything imposing such an obligation on the State, the same is unconstitutional, null and void, and of no effect, because the same is in violation of the Constitution of the State of 1852, and especially of Articles 108 and 109 of said Con-

stitution, which prohibit the granting of aid by the State to corporations and companies formed for the purpose of making works of internal improvement, except in the manner especially set forth therein.

NINTH. That, even if Section 4 of Act No. 74 of 1858 be constitutional, there can nevertheless be no obligation on the State to pay to the corporation for any property other than that named in said act, and there is no obligation on the State to pay for any property the possession and control of which has been refused to it by the corporation.

TENTH. That, even if said corporation has the legal right to make a claim for the whole or for any part of said property, or for improvements connected with or appertaining to the canal, bayou and basin, it has no legal right to refuse to deliver the possession and control of the canal, bayou and basin, as the State is the absolute and sole owner and is entitled to take possession thereof, regardless of any claim which the corporation may have in respect to such property and improvements as may be connected therewith, or which may belong or appertain thereto.

ELEVENTH. That there is on deposit in the Hibernia Bank and Trust Company \$3,000, the price paid by the New Orleans Terminal Company for a piece of ground on which was built the office of the defendant company, which piece of ground the State claimed to be hers, and which the State and the company permitted the railroad to take on making said deposit, said deposit to remain in the bank until it could be determined whether it should be paid to the State or to the defendant Canal Company, which also claimed the property in question; that this property, thus represented by the price, is part of the property now and always claimed by the State as belonging to it.

TWELFTH. That the defendant had collected the rents and revenues of the canal, bayou and basin since October 17, 1907, without right, and owed the State an accounting therefor.

The prayer was that the State have judgment against the defendant corporation, by its liquidators, decreeing that the Carondelet Canal, Bayou St. John and Old Basin, together with all the property and improvements connected therewith or thereto appertaining and belonging, including the sum of \$3,000 on deposit, be delivered into the possession and control of the petitioner, to be managed and administered by it for the use of the public, through the Board of Control appointed by the Governor under Act No. 161 of 1906, and that the same be delivered free from any obligation on the State's part to pay or compensate the defendant corporation for the same, or any part thereof; that Act No. 74 of 1858, and especially Section 4, in so far as the same may be regarded as imposing obligations on the State to pay or compensate the defendant for such property and improvements, or for any part thereof, be declared unconstitutional, null and void; but that, in the event the Court should hold there is an obligation resting on the State to pay or compensate the defendant for said property and improvements, or for any part thereof, nevertheless the State have a decree putting it in immediate possession of the canal, bayou and basin, without awaiting a final determination of the question of liability of the State to the defendant, as claimed by it, or awaiting the settlement and adjustment of the amount thereof.

There was a further prayer for an accounting by the liquidators for the rents and revenues of the property received by them since October 17, 1907.

There was an exception to the right of the Attorney-General to bring this suit and demand that the State de-rain its alleged title to the property claimed, which exception was overruled.

The defendant, through its liquidator, duly appointed under the Act 74 of 1858, amending and extending its charter, answered, setting up fully the history of the matter as above detailed.

It averred that it appears by the foregoing legislation that the State of Louisiana never at any time claimed any right, title or ownership in and to the Canal Carondelet, the Bayou St. John and the Old Basin, and the improvements therein, made by the Orleans Navigation Company and its successors, and that whatever rights the State has in and to this property are derived only from the contract rights existing between the Carondelet Canal and Navigation Company and the State of Louisiana, as defined in the acts of 1857 and 1858; that the said statutes of 1857 and 1858 constitute a contract between the State of Louisiana and the Carondelet Canal and Navigation Company protected from impairment by the Constitution of the United States, and that the State of Louisiana, neither by suit nor otherwise, can in any manner impair the obligations of said contract, or take the property of this defendant in said canal, basin and Bayou St. John without making to this defendant the compensation agreed to be made in the said contract; that if Act No. 161 of the Acts of 1906, entitled "To provide for the appointment of a Board of Control to assume the management of Bayou St. John and the Carondelet Canal, and to provide for their powers and duties," can be construed as an act authorizing the said Board of Control to take possession of the property of the Carondelet Canal and Navigation Company without making the com-

compensation provided for in the act of 1858, then the said Act No. 161 is in violation of that clause of the Constitution of the United States which prohibits the State from impairing the obligation of a contract, and also in violation of the Fourteenth Amendment to the Constitution of the United States, as a taking of the defendant's property without due process of law.

Further answering, the defendant avers that the State of Louisiana never spent a dollar upon the Carondelet Canal, the Basin or the Bayou St. John, but that the Carondelet Canal and its predecessors have expended in enlarging, widening, deepening and improving the Bayou St. John, the Canal Carondelet and the Basin thereto attached, a sum exceeding \$750,000, and that the State by no device whatsoever, either by the act of its Legislature, or the act of its Attorney-General, or by the act of its courts, can deprive this defendant of its rights in said property as granted to it and its predecessors under the authority of the United States and of the State of Louisiana without impairing the obligation of the contract between the State of Louisiana and this defendant, and without taking this defendant's property without due process of law, in violation of the Constitution of the State of Louisiana—to wit, Article 105 of the Constitution of 1852 and the Articles 166 and 167 of the Constitution of 1898—and in violation of Paragraph 1 of Section 10 of Article 1, and of the Fourteenth Amendment to the Constitution of the United States.

The defendant further avers that it has always been ready and willing to comply with the provisions of the Charter of 1857, as amended by the Charter of 1858, and is now ready and willing to deliver the Canal Carondelet and the Basin and the Bayou St. John to the State of Louisiana, upon the payment to it of the value of said prop-

erty as fixed by an award of three Commissioners—one appointed by the Company, one by the Governor and one by the Civil District Court for the Parish of Orleans—and that, until this award is made and the amount thereof paid, it has the right to hold and enjoy the said property.

As regards the \$3,000, the purchase price of the triangle taken by the railroad, it avers that said triangle was part of its private property, not connected with or making part of said canal.

On these pleadings and issues the Court below entered a judgment dismissing the plaintiff's action as premature.

From this judgment the State appealed to the Supreme Court of Louisiana.

That court held (one Judge dissenting) that, under the act of 1858 there was nothing for which the State was called on to make compensation except the railroad authorized to be built under the act of 1858, and, that as no such railroad had been built, there was no right in the defendant to demand any compensation for any of the improvements made on the property of the defendant or its predecessors.

This ground was one discovered and applied by the court itself. It was not suggested by counsel either orally or by brief.

The Court ignored the positions taken by the Attorney-General, and did not even refer to the puerile claim, that Section 4 of the act of 1858 was in contravention of the Consitution of 1852.

Having by this interpretation wiped the defendant's claim of contract out of existence, by practically deciding that it had no rights to any compensation whatever, and that it was obligated to give up to the State, without compensation, all the improvements of every kind and nature

it and its predecessors had made on the property, *no matter what they were*, the Court avoided the necessity of deciding the Federal questions raised in its answer, argued orally and insisted upon in its briefs.

The decree entered reversed the judgment below and declared:

"That there now be judgment in favor of the plaintiff, the State of Louisiana, and against the defendant * * * decreeing that the Carondelet Canal, Bayou St. John and Old Basin, together with all the property and improvements connected therewith or thereto appertaining or belonging, be delivered to and unto the possession and control of said State of Louisiana, to be managed and administered by it for the use of the public, through the Board of Control for the Bayou St. John and Carondelet Canal and Old Basin, appointed by the Governor, pursuant to the provisions of Act No. 161 of 1906, and that the same be delivered, free from any obligation on the part of the State to pay or compensate the said defendant therefor or for any part thereof.

"It is further adjudged and decreed that said defendant and said liquidators render an accounting showing their receipts and disbursements in the management of the said property since March 10, 1908.

"It is further decreed that this case be remanded to the District Court for further investigation, upon the lines indicated by the foregoing opinion, into the question of the ownership of the \$3,000 now on deposit in the Hibernia Bank and Trust Company; that the right of the plaintiff to obtain judgment for such amount as may be found due upon defendant's accounting, and to take such further proceedings and obtain such further orders as may be

"required for the execution of this judgment be reserved.

"It is further decreed that defendant pay all costs."

Application was made by defendant for a rehearing, and it was granted.

On the rehearing the Chief Justice concurred in part and dissented in part, and Mr. Justice Provosty filed a convincing dissenting opinion (Rec., p. 246 *et seq.*), maintaining the claims of the defendant.

On the rehearing the following decree was entered (p. 239) :

"It is ordered that the decree heretofore handed down in this case be recast and made the final decree of the Court as follows, to wit :

"It is, therefore, ordered that the judgment appealed from be annulled, avoided and reversed, and that there now be judgment in favor of the plaintiff, the State of Louisiana, and against the defendant, the Carondelet Canal and Navigation Company, in liquidation, herein represented by A. J. Davidson, J. H. Elliott and Hans Widmer, its liquidators, ordering the delivery by said liquidators to the State of Louisiana of the waterway known as the Carondelet Canal and Bayou St. John and Old Basin, *in its entirety*, as it stood on March 10, 1908, together with all the property and improvements appurtenant thereto, including the roadway, or roadways, upon the side, or sides, of said waterway.

"It is further ordered that whatever claims the State or the defendant may have to the triangular strip of ground, described in the petition, or to the proceeds thereof, or to any other property, movable or immovable, not appurtenant to said waterway and roadways, are hereby reserved, for further adjudi-

"cation in this proceeding, with leave to the parties
"to amend their pleadings. It is further ordered that
"said defendant and said liquidators render an ac-
"counting showing their receipts and disbursements
"in the management of said property since March 10,
"1908.

"It is further ordered that this cause be remand-
"ed to the District Court for further proceedings *on*
"*all questions reserved*, as above stated, and that the
"right of the plaintiff to obtain judgment for such an
"amount as may be found due upon defendant's ac-
"counting, and to take such further proceedings and
"obtain such further orders as may be required for
"the execution of the judgment be reserved. It is fur-
"ther ordered that the defendant pay all costs."

It will be noted that in this judgment on the rehearing the Court included the "roadway or roadways upon the side or sides of said waterway" as among the things to be delivered up to the State. They were not included in the first judgment, and the petition of the State did not include them in its demand.

ARGUMENT.

I.

It is manifest that the Carondelet Canal and Navigation Company, the successor of the New Orleans Canal and Navigation Company under the terms of the Act of 1857, which last named company was the successor of the Orleans Navigation Company, under the terms of the Act of 1852, had proprietary rights in and upon the Canal, Basin and Bayou St. John, and the improvements made thereon, and the roadways on the sides thereof, which had been legislatively recognized by the State of Louisiana, by the Territory of Orleans, and by the United States.

The Act of 1805, adopted by the Territorial Council, with the implied assent of the United States, gave the Orleans Navigation Company the right, unlimited as to time, to enter upon the Canal, Basin and Bayou, and to improve the same, and to build toll roadways on the sides thereof. The Congress of the United States made to that company various grants of land, which were used to enlarge the basin and the canal. That company made various purchases of land to enlarge, widen and straighten the Canal and Bayou, and to construct the roadways on each side thereof. In these purchases and in the improvements put on the canal that company expended very large sums. In fact, it could not do all that ought to have been done, and became insolvent.

When the State brought its action to dissolve the corporation, *it did not seek to forfeit any of the company's property or proprietary rights.*

On the contrary, the whole of the property interests of said company were conserved by the Act of 1852, providing the manner in which the affairs of the company should be liquidated by the Court having granted jurisdiction of the forfeiture cause. All of the property of the company, "real, personal, movable and immovable," were to be sold "**in block** at public auction" to the highest bidder, payable one-tenth in cash and the remainder to be paid in bonds, secured by mortgage and vendor's privilege on the property sold.

The Court to which this mandate was given by the Legislature interpreted it by selling the property detailed in the act of sale, found in the record, pages 41 to 47, among which were:

"All the rights, titles, claims and interests which
 "belong to the said Orleans Navigation Company by
 "virtue of its charter resulting from an act enacted by

"the Governor of the Territory of Orleans, by and
 "with the advice of the Legislative Council thereof,
 "approved on the 3rd day of July, 1905, entitled, etc.
 " * * * which rights, titles, claims and interests
 "for the purposes in said charter mentioned, specified
 "and determined, extend to and upon the canal known
 "under the appellation of Canal Carondelet, beginning
 "from and including the Basin Carondelet in Basin
 "Street, and running to the Bayou, called the Bayou
 "St. John, also to and upon the said Bayou St. John,
 "beginning from the point of its intersection with the
 "said Canal Carondelet, and continuing down the
 "same to the Lake Pontchartrain; also to and upon
 "the roads running and situate upon each side of said
 "Bayou, from its junction with said Canal Carondelet
 "to said Lake Pontchartrain and to and upon all and
 "singular the dependencies and accessories of said
 "Basin, Canal or Bayou of whatever kind, nature or
 "denomination, the same may be * * * to have
 "and to hold the said Basin, Canal, Bayou, Roads and
 "other properties hereinabove described unto the said
 "purchaser, his heirs and assigns to their proper use
 "and behoof forever."

The purchasers paid the price of this sale partly in cash and partly in mortgage bonds.

As one of the conditions of the purchase, as prescribed in the Act of 1852, the purchasers formed the New Orleans Canal and Navigation Company, and undertook the obligations prescribed in the Act of 1852—*i. e.*, for the purpose of carrying out and effecting all the improvements detailed and described in the reports and plans known as Harrison's Report and Plans, including the construction of a New Basin at the junction of Canal Carondelet and Bayou St. John. The corporation was obligated to begin these works and improvements within six months and complete them within five

years, otherwise all the right, title and interest acquired by the purchaser, under the provisions of the act, "*together with any improvements that may be made, shall vest in and belong to the State.*"

The new corporation was to have a corporate life for twenty-five years, and at the end of the twenty-five years the State was "to have the option either of granting to said corporation a renewal of the right of receiving tolls for a second term of twenty-five years, or of purchasing for itself the *property and improvements of the company* at the appraised value thereof. If the State granted the second term of twenty-five years, then "*the whole property shall revert to the State of Louisiana at the end of the second term, without any payment or compensation made to said company.*"

Just as the Act of 1852 was adopted in anticipation of a judgment of forfeiture of the charter of the Orleans Navigation Company, just so the Act of 1857 was adopted to provide for the contingency of the forfeiture of the charter of the New Orleans Canal and Navigation Company. The act of 1857 was not to have effect unless the New Orleans Canal and Navigation Company forfeited its rights under the Act of 1852, or unless it voluntarily made a compromise with the commissioners appointed to organize the Carondelet Canal and Navigation Company and agreed to transfer, previous to the time at which their charter might incur forfeiture, all their rights and privileges. (Sec. 10, Act 1857.) Either in the event of a forfeiture by the New Orleans Canal and Navigation Company, or in the event of a voluntary surrender of its rights and property, the new company was required to pay the old company for its property, and even in case of forfeiture under the Act of 1852, the property of the New Orleans Canal and Navigation Company, described as

"the property of said company, real, personal and mixed, including the interest in the Canal Carondelet and Bayou St. John, and the WORKS AND IMPROVEMENTS DONE AND EFFECTED THEREIN, ETC." (Act 1857, Sec. 4.), were to be appraised, and the value paid over by the new company to the creditors and stockholders of said old company in the manner provided. The new company paid the old company for its property rights as thus defined.

The new company was given a corporate life for twenty-five years from and after October 17, 1857. The State reserved the right "to take possession of said Canal Carondelet and Bayou St. John, and all the property and improvements connected therewith at the end of this twenty-five years, should the Legislature determine so to do, UPON paying to this corporation the value of SAID property, to be appraised by five competent persons as experts, two to be appointed by the corporation and two by the Governor, and the four thus appointed to appoint the fifth. These experts were required to be sworn to discharge their duty faithfully.

There is no answer on this proposition of proprietary interest to what Mr. Justice Provosty said in his dissenting opinion (Rec., p. 252) :

"Indeed, the question of whether the predecessors "in title of the defendant company had a proprietary "interest in the improvement which they had made to "the Bayou, Canal and Basin, would not seem to be "an open question in view of the express and explicit "recognition of that fact in the several acts of the "Legislature on the subject of these companies. Thus "the Act of 1852 says that at the end of twenty-five "years the State shall have the option of granting another twenty-five years of charter life, 'or of purchasing for itself the property and improvements "of the company at the appraised value thereof'; and

"the Act of 1857 describes the property of the company as 'the property of said company, real, personal or mixed, including the interest in the Canal Carondelet and Bayou St. John and the works and improvements effected thereon.' How, after this, can it be said that the State has not recognized that the defendant company, which succeeded to all the rights of its predecessors, has a proprietary interest in the works and improvements made by it and its predecessors in title in the Bayou, Canal and Basin?"

II.

The State never had any proprietary interest of any kind or nature in and to any of the improvements put on the Canal, Basin and Bayou, and never claimed any. If the State had any claim of right or ownership, it was only to the fifteen-foot canal, or ditch, the small, half-moon basin and Bayou St. John in its natural condition—in other words, to these properties in the condition in which they stood when they were delivered to the Orleans Navigation Company in 1805. How can she take from the defendant the land granted to it by the United States and partly used by the defendant in enlarging and extending the Old Basin? How can she take from the defendant the lands bought to enlarge and widen the canal, to straighten and change the channel of the Bayou, and to construct the roadways on each side thereof? How can she take the wharves and landings and revetments, and piers and breakwaters constructed by the defendant? The answer is that she can rightfully expropriate them under her power of eminent domain, on making compensation therefor. She can lawfully take them under a contract right with the defendant, on complying with the terms of that contract, or she can wrongfully confiscate them by the judgment of her courts.

In this case she has denied the obligation of her contract to take them upon certain conditions named in the contract. She has passed a legislative act providing that a State Board shall take and manage the property. That act does not expressly provide for compensation to the defendant. The Supreme Court of Louisiana has interpreted this act in such a way as to hold that no implied provision for compensation is provided by that act. It has entered a decree which confiscates the defendant's property and, hence, the appeal to this Court.

III.

Under the act of 1805, the right of the Orleans Navigation Company to hold, possess and improve the canal, basin and bayou was perpetual, and no right was reserved by the sovereign, under whose authority that act was passed, to terminate, with or without compensation, the continuity of those rights.

When the judgment of forfeiture of the charter of the Orleans Navigation Company was rendered in 1852, the Legislature, in anticipation of the judgment of forfeiture to be rendered in that case, took care to provide how the property rights of the company should be protected. Those property rights were legislatively defined and sold *in block*, and the purchaser was to organize a new corporation with the powers and obligations therein defined, which obligations were to be complied with under the penalty of forfeiture of all of its rights, *including its property rights in the improvements*. The State reserved the right at the end of twenty-five years to purchase "*the property and improvements of the company at the appraised value thereof*," or to give the company a new lease of life for twenty-five years more, at the end of which time "*the whole property*" was to

revert to the State without any payment or compensation to the company.

This new company, the New Orleans Canal and Navigation Company, under the threat of a forfeiture of its charter, was merged into a third company, the Carondelet Canal and Navigation Company, which *was compelled to take and pay for the legislatively defined property rights of the second company.* In respect to its charter and the rights of the State, this new corporation, under its original charter, the act of 1857, was placed in the same position as its predecessor, the corporation organized under the act of 1852—*i. e.*, it was to have corporate life for twenty-five years. At the end of that time the State reserved the right "to take possession of said Canal Carondelet and Bayou St. John, and all the property and improvements connected therewith, upon paying the value of said property." In the event that the State should not determine to take possession of "*said property*" at the end of the first twenty-five years, then the said property "may still become absolutely the property of the State of Louisiana, and no compensation required to be made to the corporation."

The policy of the State was thus the same as to both of these corporations. The conditions upon which they were given the first twenty-five years of corporate life were the same, and the conditions upon which they were to be given a renewal of their charter for another twenty-five years were the same.

Such was the situation when the act of 1858 was passed.

The policy of the State, as expressed in the acts of 1852 and 1857, had failed. No company could live and comply with the obligations imposed by the State. No company could raise the hundreds of thousands of dollars required to

carry out the development and improvement of this property with a fifty-year charter, at the end of which time its whole investment was to revert to the State without compensation.

The State then found it necessary to change her policy about this enterprise.

The company was about to abandon their charter. (See testimony of Gagnet, Rec., p. 134, and statement of the Supreme Court of Louisiana in 36 An. 396.)

Thereupon the act of 1858 was passed, entitled "An act relative to the Carondelet Canal and Navigation Company of New Orleans."

In respect to this act Mr. Justice Provosty says in his dissenting opinion (Rec., p. 255) :

"In the second place, the Legislature must have had some strong impelling motive for thus passing another act relative to the Carondelet Canal and Navigation Company right on the heels of the act creating that company; and that motive will be sought for in vain, unless it is to be found in the purpose of prolonging the unconditional life of the company and doing away with the clause for the reversion of its property without compensation. The exemption from taxation was certainly a valuable addition to the property of the company; but the company had already an exemption for three years, and the taxation was at that time light, and exemption from it not so great a privilege as it would be in our time. The clauses granting the right to construct lay-outs, basins and half-moons and a railroad were in reality merely confirmatory of the rights already possessed by the company to construct all improvements it deemed advisable, including roads; and, besides, these additional rights could not have been considered so desirable, since they have never been availed of.

"But the overwhelming fact in the charter of 1857 was that the corporation had only twenty-five years of corporate life, and that at the end of that time the State had the option to take all of its property invested in the canal and its improvements and appurtenances at an appraised value, or to let it live for twenty-five years more, and then take all such property for nothing, so that at the end of fifty years the company would, if it spent its capital in the canal and its improvement, lose every asset it possessed. This situation presented to the would-be investors in the stock of the company the problem: Can this company earn in fifty years a reasonable interest on its money expended in improving the canal, say its \$500,000 of capital, and whatever further amount it might by sale of mortgage bonds realize, and also a sinking fund which will be sufficient in that time to replace this entire outlay? The previous history of the enterprise did not justify any such expectation. The Orleans Navigation Company had expended its whole capital stock, and more, in improvements on the property, and had become utterly insolvent. To realize in what condition the company and its property were, it is only necessary to read the decision of the Supreme Court in *State vs. Orleans Navigation Co.*, 7 An. 679. It will be remembered that the new company was capitalized at \$500,000, a very large capitalization at that time, and was authorized to issue an unlimited amount of bonds secured by mortgage on its property, all of which would have to revert to the State gratis. It would seem to be clear, therefore, that the stumbling block in the path of the enterprise was this reversion clause of the act of 1857, and that the purpose of the act of 1858 was to remove it."

IV.

In light of these considerations, let us examine whether the provisions in the act of 1857 in respect to the corporate

existence of the Carondelet Canal and Navigation Company can stand in the face of the provisions of the act of 1858.

By Section 20 of the act of 1857, incorporating the company, it is provided:

"That this corporation shall have existence for and during the term of twenty-five years from and after the 17th day of October next; provided, that the State of Louisiana shall have the right to take possession of *said Canal Carondelet and Bayou St. John, and all the property and improvements connected therewith*, at the expiration of the term above mentioned, should the Legislature determine so to do, upon paying to this corporation the value of *said property*, to be appraised by five competent persons, as experts, two to be appointed by this corporation and two by the Goevrnor, and the four thus appointed shall appoint a fifth; said experts shall be required to take an oath to discharge their duty faithfully. In the event that the State shall not determine to take possession of *said property*, then this corporation shall be in existence for twenty-five years from and after the expiration of the term in this section mentioned aforesaid, and at the end of such second term of twenty-five years *the said property* MAY still become absolutely the property of the State of Louisiana, and no compensation required to be made to this corporation."

Let us compare this clause with Section 4 of the act of 1852, governing the corporate existence of the New Orleans Canal and Navigation Company, the predecessor of the Carondelet Canal Company. That section provided:

"It shall be a condition of said sale that if the purchasers shall organize themselves into a corporation under the laws of this State, *for a term of twen-*

*ty-five years, for the purpose of carrying out and effecting all the improvements detailed and described in the reports and plans known as Harrison's reports and plans, including the construction of a new basin at the junction of Canal Carondelet and Bayou St. John, * * ** then said corporation shall be entitled to receive and exact all such tolls and revenues for the use of said canal, bayou and road as the Orleans Navigation Company was entitled to receive under its charter; provided, that at the end of said term of twenty-five years the State of Louisiana *shall have the option* either of granting to said corporation a renewal of the right of receiving said tolls for a second term of twenty-five years, or of purchasing for itself **the property and improvements of the company** at the appraised value thereof; and provided, further, that if said second term of twenty-five years be granted, *the whole property* shall revert to the State of Louisiana, at the end of said second term, without any payment or compensation made to said company."

By a mere comparison of these acts it appears that the State was to pay, at the end of the first twenty-five years, for the same thing under the provisions of both acts, and that the same thing was to revert at the end of the second term of corporate existence under both acts. This thing to be paid for under the first act (that of 1852) is described as **"the property and improvements of the company,"** and the thing that was to revert is described as "the whole property." The thing to be paid for under the second act (that of 1857) is described as **"the said property."** The antecedent to which these words refer is the words *"and all the property and improvements connected therewith."* The thing to revert is described as *"said property."*

It is manifest that the word "*may*" in the act of 1857 means "*shall*," as it often does in statutes.

By Section 4 of the act of 1858 it was provided:

"The said company shall enjoy corporate succession during fifty years from *this date*; after which time it may revert to the State, *upon* due compensation being made according to award by three commissioners, one appointed by the Governor of the State, one by the company, and the third by any Court of record of New Orleans."

This act was adopted March 10, 1858.

In the French text of this statute the word "*it*" is translated by the feminine pronoun "*elle*."

It is manifest also that the word "*may*," in this section, means what it did in the corresponding section of the act of 1857—*i. e.*, it means "*shall*."

These three statutes are *in pari materia*, and must be interpreted together.

Can these two sections of these statutes of 1857 and 1858, on the subject-matter of the corporate existence of the Carondelet Canal Company and the respective rights of the State and the corporation at the expiration of the corporate existence, stand together? We submit that they cannot so stand together; that they are irreconcilably repugnant to each other and that the Section 4 of the act of 1858 repeals Section 20 of the act of 1857, and was intended to operate such repeal.

True there is no repealing clause to the act of 1858, but under the law of Louisiana an implied repeal is just as good as an express repeal.

It is provided by Article 23 of the Civil Code of Louisiana, which has been in force since 1825, as follows:

"Article 23. The repeal is either express or implied. It is express when it is literally declared by a subsequent law. It is implied when the new law contains provisions contrary to or irreconcilable with those of the former law."

This article declares the general rule which prevails everywhere.

U. S. vs. Tyner, 11 Wall 92; *Henrietta Mining Co. vs. Gardiner*, 173 U. S. 123.

By the act of 1857 the corporate life began on the 17th day of October, 1857, and ended on the 17th day of October, 1883. At that date the State had the right to take "*all the property and improvements*" connected with the Basin Canal and Bayou, upon making compensation to the company of the value of said property, to be determined by five experts appointed in the manner designated. If, at the end of this twenty-five years of existence, the State should not determine to take possession of said property, then the corporation was to be in existence for twenty-five years from October 17, 1883, and the "*said property*" was to become absolutely the property of the State, without compensation.

By the act of 1858 the corporate life began on March 10, 1858, and the corporation was given an unbroken, continuous corporate existence for fifty years from that date. At the expiration of this unbroken period of fifty years *it* (meaning, as we shall show, the same thing provided both in the act of 1852 and in the act of 1857) shall revert to the State upon "*due compensation*," made according to

an award by three Commissioners appointed in a way different from the five experts named in the act of 1857.

After the act of 1858 was passed, the company did not derive its corporate existence at all from the act of 1857. It then became impossible to execute the act of 1857. If the State had attempted in 1883, the period at which the first grant of corporate existence ended, to deprive the company of its possession of the Canal and Bayou, and had demanded the appointment of the five experts provided for in the act of 1857, the answer of the Canal Company would have been: "I have a new contract with you as to my corporate existence and my corporate rights in respect to this property." Indeed, what the State attempted by Act No. 86 of the Acts of 1884 (printed in full in the Appendix) and which the Supreme Court of Louisiana declared void in the *Tedesco case* (*supra*) was to have the Canal Company's property appraised and to take possession of it.

Under the Section 20 of the act of 1857 the corporate life was fixed at twenty-five years, beginning October 17, 1857, and ending October 17, 1883, with the option in the State to grant another term of twenty-five years upon the conditions named.

Under Section 4 of the act of 1858 there was an absolute and unconditional free grant of corporate life for fifty years from March 10, 1858, to March 10, 1908. Hence this new grant was a repeal and nullification of the right of the State, under the act of 1857, at the end of the period of twenty-five years to terminate the corporate existence and take the corporation's property upon making the compensation named in the manner named. It was also a repeal of the right of the State to exact as a price of the second twenty-five years of corporate life the abandonment of compensation for its property, because, under the amen-

datory act, it had the right to fifty years of corporate life without the obligation to make any such sacrifice. During the period of the new grant the State surrendered all right to take the property at all, whether with or without compensation, and agreed that at the end of the new term of fifty years it should revert "*upon due compensation made*" according to an award made in an entirely different way from that provided in the act of 1857.

It is impossible for one to compare the provisions of Section 20 of the act of 1857 with those of Section 4 of the act of 1858, and to rise from the examination of these two sets of provisions, *covering identically the same subject-matter*, with the conclusion that the two sets of provisions can remain in force at the same time. It is impossible to reason out any parallel existence of the two sets of provisions. How can a corporation by one act have a corporate life of twenty-five years, beginning at a certain date, with the option on the part of its creator to give it, for a consideration therein expressed, a new term of life for twenty-five years more, and then have by another and later act a corporate existence for fifty years, beginning on a new date and ending on a date entirely different from that named in the first act? There being only one corporate existence possible, the first grant of *conditional* corporate existence was lost, drowned and merged in the second *unconditional* grant of corporate existence. In the face of the act of 1858, what rights could the State exercise under the provisions of the act of 1857? Take possession of the property on October 17, 1883, and compensate the Company as per the award of the five experts? No. Take possession of the property on October 17, 1907, and deny all compensation to the Company? No. On both dates the corporation was living its life under the act of 1858,

and under that act it was entitled to enjoy its corporate existence and all its property rights until March 10, 1908.

When that period came—*i. e.*, March 10, 1908—what rights did the State have in, on and upon the property in the possession of the defendant? If the act of 1858 repealed the act of 1857, then the State had only such rights as the act of 1858 gave her, and they were that there should be a reversion to the State upon “due compensation made according to award by three Commissioners.” That which was to revert is described in the statute as “it.”

What did the Legislature mean by the word “it”? According to the rules of grammar, the relative pronoun “it” in this sentence referred to its antecedent, “the said company.”

That “it” referred to its immediate antecedent, “the said company,” appears by the French text of the statute, in which “it” is translated “*elle*,” agreeing with its feminine antecedent, “*cette compagnie*.”

The Supreme Court of Louisiana could find nothing in the statute to which the word “it,” as a description of the thing which was to revert on due compensation made, except the railroad which the company was authorized to build, in the second section of the act, and it held that, as the railroad was never built, there was nothing for which the company was to have compensation, because, outside of the railroad, there was nothing—no property right or claim—which the Company was entitled to have compensation for.

In its opinion the Court disposed of the grammatical antecedent to “it”—that is, the words “the said company”—with a parenthetical clause, saying, “*as it, the said company, cannot revert to the State in any practical way.*” After thus brushing the grammatical antecedent away, by

an aside, the Court then prosecutes its search for an antecedent, through the act of 1858, by saying (Rec., p. 214) :

"We are unable to find anything else in the act of 1858 than the railroad to which the relative 'it,' as used in Section 4, can in any way be made to relate. 'It' does not relate to the lay-outs, basins and half-moons referred to in Section 1; nor to the fines which the General Assembly, in a spirit of unusual liberality, by Section 7, authorized the company to impose, to be recovered before any court of competent jurisdiction; nor does 'it' apply to the bonds which, by Section 8, the company was authorized to issue; nor yet to the exemption from taxation, conferred by Section 9."

This ignoring of the grammatical antecedent found in the sentence—*i. e.*, the said corporation—and the search for another antecedent in the body of the statute is, we submit, technical and sophistical to the limit.

If "it," therefore, refers to its grammatical antecedent, "the said company," the statute means the same thing as if it said, "The said company may revert to the State upon due compensation being made according to award, etc."

How should this language be interpreted? What was "the said company"? It was a corporation with rights in, to and upon the Canal, Basin and Bayou St. John, which rights it has acquired with *legislative consent and direction*. Its capital stock and funds had been invested in the enlargement, betterment and improvement of a public work, and in the purchase, by *legislative direction and description*, of the rights and property of its predecessor, whose money and funds had been similarly expended in the purchase, by *legislative direction and description*, of the property of its predecessor, whose money had been simi-

larly expended in, and whose property had been dedicated to, the enlargement, betterment and improvement of the same public work under a grant made by Federal authority before the State of Louisiana ever had any existence. This corporation owned real estate. Some of this real estate, in whole or in part, had been incorporated into the canal. Some of this real estate was adjacent to the public work, and it might or might not be used in whole or in part for canal purposes. It owned tugs and barges, and dredges, and other paraphernalia and machinery engaged in operating and maintaining said waterway. It had bought land and diverted the crooked course of the bayou. It owned office furniture and fixtures. It owned and operated toll roads on the side of the bayou.

At the time the right of reversion would arise the right of the company to be a legal entity would not be in existence, and, therefore, a non-existent right could not revert. But everything else which constituted "the said company" could revert, and had a money value which could be determined by appraisement.

If this did not remove the ambiguity as to what was to revert under the description of "the said company," there was legislation *in pari materia*—*i. e.*, the Act of 1852 and the Act of 1857. By these two acts the State had stipulated a right of reversion to herself and a consequent compensation to others in respect to this same public work. Those other persons were the same corporation and its predecessor in title to which it was made successor by legislative direction. On both of these occasions the State had stipulated for the reversion of the same thing—*i. e.*, the public work and all the property and improvements connected therewith. By merely turning, therefore, to these acts *in pari materia*, dealing with a right of reversion to the same thing

between the same parties or their privies, it becomes perfectly clear what "it" and the "said company" mean, and that is that "it" or its antecedent, "the said company," means that there should revert the same property and the same property rights, belonging to the same company, which it had been previously agreed between the same parties should revert on compensation being made. We submit that no other conclusion but this can be reached, except to ignore the meaning of the words "the said company" and to embark on a search through other sections of the statute to find an antecedent for "it," when the true antecedent stares one in the face in the same sentence in which the relative pronoun is found.

V.

If Section 4 of the Act of 1858 repealed Section 20 of the act of 1857, then the corporation's contract rights with the State in respect to its corporate existence and in respect to the State's right of reversion were to be governed entirely by the provisions of the act of 1858, and the State lost all right of reversion under the act of 1857.

What was to revert under the act of 1858 on compensation being made was either the same thing as was provided under the act of 1857, or it was something different.

If what was to revert under the act of 1858 was the same thing that was to revert under the act of 1857, then the act of 1906 impaired the obligation of the contract between the State and the Carondelet Canal and Navigation Company as expressed in the act of 1858, because the act provided no compensation to the corporation expressly or impliedly, and the Supreme Court of Louisiana has substantially and essentially enforced that act on which the

State sued in the case by condemning the company to surrender without compensation all of the basin, canal and bayou, and all the property and improvements appurtenant thereto, including the roadway or roadways upon the sides thereof.

If what was to revert under the act of 1858 was something different from that which was to revert under the act of 1857, and did not cover in whole or in part that which was to revert under the act of 1857, then the State had no claim, by reversion or otherwise, to anything but the property as it stood in 1805, when the act to incorporate the Orleans Navigation Company was passed.

VI.

If "it" in the act of 1858 meant the railroad, which was never built, as the Supreme Court of Louisiana held, and Section 4 of the act of 1858 repealed Section 20 of the act of 1857, then the State had no right whatever to any of the property and improvements connected with and appurtenant to the Basin, Canal and Bayou St. John, and the roadways on the side or sides thereof, and particularly to the shellroad or roads constructed by the Orleans Navigation Company under the provisions of Section 13 of the act of 1805, and the State could not take any of this property for public purposes without compensation either by legislative act or by judicial decree, without a violation of the Fourteenth Amendment to the Constitution of the United States, which forbids the taking of property without due process of law.

The only way that the State could lawfully take this property was by expropriation proceedings in due form of law.

Therefore the act of 1906, sued upon by the State, and the judgment of the Supreme Court enforcing this act and condemning the defendant to deliver to the State "the waterway known as the Carondelet Canal and Bayou St. John and Old Basin, *in its entirety*, as it stood on March 10, 1908, together with all the property and improvements appurtenant thereto, including the roadway or roadways upon the side or sides of said waterway" (Rec., p. 240), without any compensation whatever, was a taking of the defendant's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

The decree of the Supreme Court does not draw any distinction between the improvements put on or made appurtenant to the waterway prior to or after the passage of the act of 1857, but before the act of 1858, and those put on or made appurtenant to the waterway after the passage of the act of 1858, but all of this property, together with roadways bought and built with the money of the defendant and its predecessors, is swept, without compensation, into the maw of the State. If this is not legislative and judicial confiscation, what is?

The only property of the defendant which is reserved from the operation of this "final decree" (thus designated by the Court itself, Rec., p. 239), which is immediately executory, and under which the defendant can be ousted and would have been ousted, except for the supersedeas taken to this Court, is that which is "not appurtenant to said waterway and roadways" (Rec., p. 240), and the proceeds of the triangular strip of ground. If this triangular strip of ground was appurtenant to the waterway, then this decree covers that also. The only reason why it was not included in the decree is that the Court was in doubt on the

evidence as to whether it was appurtenant to the waterway.

This decree is not based on the theory that defendant had had possession of a public waterway for a time fixed by law, and that such time had expired, but it is based on an enforcement of Section 20 of the act of 1857, regulating the term of corporate existence of the defendant, and dividing it into two periods of twenty-five years each, beginning respectively October 17, 1857, and October 17, 1883, the one granted upon the condition that if the other was not granted the State would take and pay for the defendant's property, and if the State did not take and pay for defendant's property and gave it a second term of twenty-five years, then the whole of the defendant's property should revert to the State without compensation. It ignores Section 4 of the act of 1858 entirely. After thus ignoring this Section 4, the Court then recognizes it as the one governing and regulating the corporate life of the defendant company, by adjudging that the defendant account for the rents and revenues of the property, not from October 17, 1907, but from March 10, 1908.

In this respect the Court ignored the act of 1906, which was made operative on October 17, 1907, and by implication directed the officials of the State to take possession of the defendant's property on that day.

As a matter of fact, this act was adopted, ignoring the act of 1858, on the advice and opinion of the then Attorney-General, who advised that the act of 1858 was void because in controvention of the Constitution of the United States, in that it impaired the obligation of the contract between the State and the defendant corporation, as expressed in the act

of 1857, as if the State and its creature could not by mutual consent modify their contract. This absurd opinion, acted on by the Legislature, and denounced before the legislative committees as absurd by the counsel of the corporation, which had accepted and acted on the modification of its charter, and had pleaded it in the courts again and again, was abandoned when this suit was brought, and another absurd ground was set up to get rid of the act of 1858—*i. e.*, that it was in violation of the Constitution of 1852—a ground so frivolous that the Supreme Court did not notice it, but found grounds of its own, neither suggested nor argued by counsel.

So that the Legislature proceeded to get rid of defendant's rights on one ground, the law officer of the State on another, and the majority of the Supreme Court of Louisiana on another.

VII.

Even if the tenure by which the defendant held the Basin, Canal and Bayou were to be construed as a lease, at the termination of this tenure the lessee would be entitled to payment for its improvements, if the lessor should keep them (C. C., Art. 2726), and this is true even if the lessee should agree that the improvements should remain at the termination of the lease.

Ross vs. Zuntz, 36 Annual, 888.

VIII.

The State of Louisiana never had any kind of right or title to the Basin and Canal Carondelet. They were built by the Spanish Government as a public work, and the title

vested in that government. When Louisiana was ceded by Spain to France the title to this public work vested in France, and when France sold Louisiana to the United States, the title to this public work vested in the United States. When Louisiana was erected into a State the title to this public work no more vested in the State of Louisiana than did the title to the public lands in the State, or the title to the Custom House, or the title to the old Government Hospital, or the title to the commons around the city. The United States still owns and occupies the Custom House, and the State never made any claim to it. The public lands were never claimed by the State. The State never made any claim to the old Government Hospital or its site, and it was granted by the United States to the Orleans Navigation Company, which utilized the larger portion of it to enlarge the Basin.

The commons were granted by the United States to the city of New Orleans, with the reservation of a right of way through them for canal purposes to the Orleans Navigation Company. The United States, acting through the Legislative Council, with the consent of the Congress, granted the Orleans Navigation Company perpetual rights in this Canal and Basin as well as in the Bayou St. John. Those rights were transferred, with the consent of the State, to the New Orleans Canal and Navigation Company, and by the New Orleans Navigation Company to the defendant. If the State has no right of reversion to the rights of the Carondelet Canal and Navigation Company, then she has no other rights whatever in the Canal and Basin, at least, and she cannot take these rights except by due process of law—i. e., by condemnation and compensation.

Suppose the Canal Zone at Panama should be erected into a State, would such State, by the mere fact that she be-

came a State, and without any direct grant from the United States Government, become the owner of the Panama Canal? Is there any difference between that case and this except the size and importance of the canal?

What right, then, has the State, outside of her contractual right of reversion, to take this property away from the defendant without any compensation made to it for its rights to possess, improve and develop this property, granted by the United States to the Orleans Navigation Company, by the Orleans Navigation Company, with legislative consent and direction, to the New Orleans Canal and Navigation Company, and by the New Orleans Canal and Navigation Company to the Carondelet Canal and Navigation Company, likewise by legislative consent and direction?

This situation is, we submit, the key to the language of the act of 1852, directing how the affairs of the Orleans Navigation Company should be liquidated, its property disposed of and its successor organized; the key to the language of the act of 1857, and the key to the language used in Section 4 of the act of 1858. The "it," which was to revert to the State, on due compensation, was to include the rights thus granted by the United States on and over this public work belonging to the United States.

Even if we should grant that the Bayou St. John was a navigable stream and the title to it passed to Louisiana by virtue of her sovereignty, that would not carry title to the Canal and Basin, which was a separate and distinct public work.

The language used by the Supreme Court of Louisiana in its second and final decree—to wit, "the *waterway* known as the Carondelet Canal and Bayou St. John and Old Basin"—is new and was never before used with reference to this property.

IX.

The grant of the Territorial Council to the Orleans Navigation Company was under the Constitution of the United States a perfectly valid grant.

Monongahela Navigation Co. vs. United States,
148 U. S. 312, and authorities there cited.

If, under its super-eminent power to regulate commerce, the United States itself should determine to take possession of the "waterway," as the Supreme Court of Louisiana calls it, consisting of the Canal, Basin and Bayou St. John, and improve the same, it would be compelled to pay for the improvements lawfully made on said "waterway," under said valid grants to make such improvements, whether such grants were made by the State or by itself. It would not only be compelled to pay for the physical property taken possession of, but also for any valid franchise to collect tolls for the use of said improved waterway. If the State should be permitted, without compensation, to confiscate the defendant's improvements (assuming, of course, that the State has no right of reversion in said improvements without compensation), then the State could demand payment for these improvements from the United States. If the United States had taken this action prior to March 10, 1908, then the United States would have had to pay the Carondelet Canal and Navigation Company not only for all its improvements, but also the value of its franchise to receive tolls from the date of the taking to the date of the expiration of its franchise.

See *Monongahela Navigation Co. case supra*.

If the United States had taken this action subsequent to March 10, 1908, the date when the franchise to take tolls

expired, then it would have had to pay the Carondelet Canal and Navigation Company the value of its improvements, or if the State owned the improvements it would have had to pay the State for such improvements.

Upon what theory can the State be permitted to take, without compensation, the improvements lawfully made on a public "waterway," when the United States, with its super-eminent power over such "waterway," cannot take them without compensation. The United States is restrained from so doing by the Fifth Amendment, which prohibits it from taking private property for public uses without just compensation, and the State is prohibited from so doing by the Fourteenth Amendment, which prohibits a State from depriving any person of life, liberty or property without due process of law, and under that amendment the legislative or judicial taking of private property for public use, without due compensation, is a depriving of such person of his property without due process of law.

X.

We, therefore, submit that the defendant's assignments of error are good and that the judgment of the Supreme Court of Louisiana be reversed, with instructions to remand the case to the District Court, to be there proceeded with in accordance with the opinion and judgment of this Court.

Respectfully submitted,

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APPENDIX.

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AN ACT OF THE GOVERNOR AND TERRITORIAL LEGISLATIVE COUNCIL OF THE TERRITORY OF ORLEANS.

Approved July 5, 1805 (Acts of 1805,

Chapter I).

AN ACT

For improving the inland navigation of the territory of Orleans.

SEC. 1. *Be it enacted by the governor of the territory of Orleans, by and with the advice and consent of the legislative council thereof, That there shall be established a company for the purpose of improving the inland navigation of this territory, to be called and known by the name of "The Orleans Navigation Company;" that the capital stock of the said company shall consist of two thousand shares, not exceeding one hundred dollars each, and that Joseph Faurie, Francis Duplessis, Julien Poydras, William Kenner, William Wykoff of the Opelousas, Louis Blane, and George Pollock, shall be and are hereby appointed commissioners for receiving subscriptions for the capital stock in said company, and shall provide books for the said company, and shall enter in the said books as follows: "We whose names are hereunto subscribed, do for ourselves and our legal representatives promise to pay to the Orleans Navigation Company, such sum or sums of money for each share by us subscribed respectively, as the president and directors of the said company shall require:" and the said commissioners shall open the books for the several subscriptions at the city of New-Orleans, and at such places as they may deem proper, on the second Monday in July next, and shall take the subscription of every person who shall offer to become a subscriber, until the*

Who to receive
subscriptions.

Navigation com-
pany authorised.

When books to be
opened.

whole of the said stock shall be subscribed, and shall give notice in two of the public papers printed in the said city, both in the English and French languages, of the time and place of opening the said subscription; and directing the sum which the said commissioners are hereby authorised to determine which such subscriber shall pay for the first payment on every share which the said commissioners are hereby authorized to receive in money.

Company incorporated.

SEC. 2. *And be it further enacted*, That as soon as five hundred shares shall be subscribed in the said company, the persons who shall have subscribed for the said stock, while they continue to be stockholders therein, and all others who may become stock-holders of the said capital stock, shall be and they are hereby created and made a corporation and body politic in fact and name, to be known by the name and style of the "Orleans Navigation Company;" and by that name they and their successors forever may have perpetual succession; and by that name the said company shall be and hereby is made able and capable in law to have, purchase, receive, possess, enjoy and retain to them and to their respective successors forever, lands, rents, tenements, hereditaments, goods, chattels and effects, of what kind, nature or quality soever requisite for carrying into effect the purposes of this act, and the same to sell, demise, grant or dispose of; and to sue and be sued, plead and be impleaded, answer and be answered unto, defendant and be defended in the courts of record, or any other place whatsoever, and also to make, use and have a common seal, and the same to break, alter or renew at their pleasure; and also to ordain, establish and put in

execution such by-laws, ordinances and regulations as may seem necessary and convenient for the government of the said corporation, not being contrary to the laws of this territory, or those of the United States, and generally to do and execute all and singular acts, matters and things which to them it shall or may appertain to do, subject to the provisions hereinafter contained.

SEC. 3. *And be it further enacted, That for* ^{Directors to be}
the well ordering the affairs of the said corpora-
tion, there shall be twelve directors, to be chosen
annually, after the present year, on the first Mon-
day in February, in every ensuing year, by the
stock-holders of the capital stock of the said cor-
poration, or their proxies. And those who shall
be duly chosen at any election, shall be capable
of serving as directors, by virtue of such choice
until the second Monday in February, in the year
next following such choice, and until others are
duly elected in their places. And the said di-
rectors at their first meeting after such election,
shall chuse one of their number for president.
And that as soon as five hundred shares shall be
subscribed in the said company, the said commis-
sioners shall give public notice in two of the news-
papers of the time and place of holding an elec-
tion for directors of the said corporation, for the
present year, and it shall be lawful for such elec-
tions then and there to be held; and the persons
then chosen directors for the said company, shall
immediately chuse one of their number to be their
president; and the said directors shall continue
in office until the second Monday in February, in
the next year, and until others are duly elected
in their places: *Provided always, That in case it*

Proviso.

should at any time happen that an election of directors should not be made upon any day when pursuant to this act, it ought to have been made, the said corporation shall not for that cause be deemed to be dissolved, but it shall be lawful on any other day to hold and make an election of directors, in such manner as shall be directed by the said commissioners, or by the laws and ordinances of the said corporation: *And provided also*, That in case of the death, resignation or absence from the territory of a director, his place may be filled up for the remainder of the year by the said directors.

President and directors may convene special meetings of the directors.

SEC. 4. *And be it further enacted*, That it shall be lawful for the said president and directors to convene special meetings of the stock-holders, whenever such meetings shall appear necessary, giving at least fifteen days notice thereof, in two of the news-papers printed in the city of New-Orleans, in the English and French languages.

Directors may appoint officers.

SEC. 5. *And be it further enacted*, That the directors for the time being of the said corporation, shall have power to appoint such officers, agents, clerks, superintendants, engineers, workmen, and others under them, as shall be necessary for executing the business of the said corporation, and to allow them a proper compensation for their services.

Fundamental rules

SEC. 6. *And be it further enacted*, That the following shall be fundamental rules and articles of the said corporation:

1st. Every individual stockholder or company or body corporate holding shares in the said corporation shall be entitled to one vote for every share not exceeding ten shares, which he, she or they may hold in the same.

2d. No director shall be entitled to any emolument which shall not have been allowed at a meeting of the stock-holders; but the directors may make such compensation to the president as to them may seem reasonable.

3d. Not less than seven directors shall constitute a board, of whom the president shall always be one, except in case of sickness or necessary absence, in which case his place may be supplied by any other director, whom he by writing under his hand, shall nominate for the purpose.

4th. Every treasurer before he enters upon the duties of his office, shall give bond with two or more securities, to the satisfaction of the directors, and in such sum as they shall direct.

5th. No bank or office of discount shall be established by the said corporation.

6th. The stock of the said corporation shall be assignable and transferable, according to such rules as shall be made in that behalf, by the laws and the ordinances of the same.

7th. All bills or notes which may be given by the said corporation, or their directors, signed by the president, and countersigned by the treasurer or principal clerk, promising the payment of money to any person or persons, his, her, or their order, though not under the seal of the said corporation, shall be binding and obligatory upon the same, in like manner, and with the like force and effect, as the same would by law, upon any private person or persons, if the same were issued by him or them, and shall be assignable and negociable in like manner.

8th. Half yearly dividends shall be made by the said corporation, of such part of the nett

profits of the same, among the stock-holders, in proportion to their respective shares.

9th. The president and directors of the said corporation, shall have power to direct the mode in which, and the periods when the amount of the shares shall be paid.

SEC. 7. *And be it further enacted*, That the said corporation, by their president, directors or agents, may enter into, and upon all and singular the land and lands covered with water, where they shall deem it proper to carry the canals and navigation herein before particularly assigned, with or without the consent of the owner or owners thereof, and to lay out such routes and tracks as shall be most practicable for effecting navigable canals as aforesaid, by means of locks and other devices, doing nevertheless as little damage as possible to the grounds and enclosures in and over which they shall pass; and thereupon it shall & may be lawful for the said president & directors to contract & agree with the owners of any lands and tenements, for the purchase of so much thereof, as they may deem necessary for the said canal for roads, or any mills, works or buildings adjoining thereto, if they can agree with such owner or owners; but in case of disagreement, or in case the owner thereof shall be a married woman, under age, non compos mentis, or out of the territory, then it shall and may be lawful to and for the said president and directors to cause a survey and map to be made of the ground, in their estimation requisite, in the field book, of which survey and map shall be distinguished the land of each of the several owners and occupants, appropriated or intended to be appropriated as aforesaid, and the quality thereof; and shall exhibit the

Powers of the corporation.

How the corporation is to proceed where persons refuse to let them pass through any land.

same to a judge of the superior court of this territory, who shall thereupon by writing under his hand and seal, appoint not less than three, nor more than five discreet persons, none of whom shall be interested in the said corporation, or the land so surveyed as aforesaid, to appraise the premises specified in such field book.

And it shall be the duty of the appraisers or a majority of such as shall be appointed to examine the land of such owner or occupant so appropriated, and to ascertain the value thereof, and the damages each may sustain by such appropriation, and to make a regular entry of such valuation and assessment of damages, in a book to be kept by them for that purpose, and certify the same under oath, to be a true, fair and impartial valuation and assessment, to the best of their belief; and shall thereupon cause such survey and book, the execution of the certificate being first duly proved or acknowledged before a judge of the superior court, to be filed in the office of one of the public notaries, there to remain on record. And the said corporation, and their successors upon paying to the several owners, the sums of money so assessed as aforesaid, together with the costs of appraisal, shall immediately be vested with a good and indefeasible title to the said lands and tenements, mentioned and specified in such field book, filed as aforesaid; *Provided always*. That no lands shall be surveyed and appraised unless with the consent of the owners, under this section, which shall extend more than one hundred and eighty feet from the edge of such projected canal or navigation.

SEC. 8. *And be it further enacted*, That it shall and may be lawful for the president and directors of the said company and their superin-

Company may carry a canal through any land.

tendants, engineers, artists, workmen, and laborers, with carts, waggons and other carriages, with their beasts of draft and burthen, and all necessary tools and implements to enter upon the lands contiguous or near to the tracts of the intended navigation, first giving notice of their intention to the owners thereof, and doing as little damage thereto as possible, and repairing any breaches they may make in the enclosures thereof, and making amends for any damage that may be sustained by the owners of such grounds, by appraisement in manner hereinafter directed, and upon a reasonable agreement with the owners, if they can agree, or if they cannot agree, then upon an appraisement to be made by three indifferent persons, or a majority of them, to be appointed by any justice of the peace for the district in which such lands shall be situated; and on tender of the appraised value, to carry away any timber, wood, stone, gravel, sand or earth, there situated, most convenient for making or repairing the said canals, navigation and roads.

SEC. 9. *And be it further enacted*, That as soon as the said company shall have improved the navigation of the Bayou St.-John, so as to admit at low tides, vessels drawing three feet water, from the lake Pontchartrain to the bridge at the settlement of the Bayou, then the said president and directors shall be entitled to ask, have and receive from every vessel passing in or out of the said Bayou, a sum not exceeding one dollar for every ton of the admeasured burthen of the said vessel, and so in proportion for every boat of a burthen less than one ton. And when farther improvement shall permit vessels drawing three feet water, to pass from the said Bayou by the canal Carondelet to the bason terminating the same at

When company may receive toll.

Rate thereof.

the city ditch, the said president and directors shall be entitled to ask, have and receive an additional toll not exceeding one dollar per ton as aforesaid: and when the said navigation shall be improved by the said company so as to admit vessels drawing three feet water, from the lake Pontchartrain, to any place within one hundred yards of the river Mississippi, it shall be lawful for the said company to have and receive an additional toll not exceeding one dollar per ton as aforesaid, and when the communication between the said navigation and the river Mississippi shall be made complete, every vessel passing from the said navigation to the said river, or from the river into the said navigation, shall pay a toll not exceeding five dollars for every foot of the draft of said vessel.

And on every other canal which shall be made, or other natural means of navigation which shall be improved by the said company, so as to admit vessels drawing three feet water, from the sea or lakes, to the river Mississippi, it shall be lawful for the said company to demand, have and receive toll, provided that the said toll shall not exceed in the whole, the sum of five dollars for every ton of the burthen of such boat or vessel, and so in proportion for every boat of a burthen less than one ton, unless by and with the consent of the governor of the territory for the time being: and it shall and may be lawful for the president and directors of the said company to appoint such and so many collectors of toll, for the passage of boats and vessels, in, through and along the said canal, and in such places as they shall think proper, and that it shall and may be lawful to and for such toll collectors, and their deputies, to demand and receive the tolls aforesaid, of and

from the persons having the charge of such boats and vessels.

Mode of ascer-
taining the tonnage
of craft passing
through the canals.

SEC. 10. And in order to ascertain the tonnage of boats using the said canals and navigation, *Be it further enacted*, That on the request of the owner or supercargo of such boat or vessel, or of the collector of the said tolls, it shall and may be lawful for each of them to choose one person to measure and ascertain the number of tons, which the said boat or vessel is capable of carrying, and to mark the same in figures, on the head and stern of the said boat, and the said vessel so measured and marked, shall always be permitted to pass through the said canal navigation, for the price per ton to which the number of tons so marked shall amount; and if the owner or supercargo of such vessel shall decline choosing a person resident within one league and a half of the place where such toll is payable, to ascertain the tonnage thereof, then the amount of such tonnage shall be fixed by a person to be appointed for that purpose by the said collector of tolls; and the said toll shall be paid according to such measurement.

Vessels may be
detained until toll
is paid.

SEC. 11. *And be it further enacted*, That the collectors of toll, duly appointed and authorized by the president and directors of the said corporation may stop and detain all boats and vessels, using the canals and navigation to which they respectively belong, until the owner or commander, or supercargo of the same shall pay the toll so fixed as aforesaid, or may distrain part of the cargo therein contained, sufficient by the appraisement of two credible witnesses to satisfy the same, which distress shall be kept by the collector of the tolls taking the same, for the space of eight days, and shall afterwards be sold by public vendue, at

the most public place in the neighborhood, to the highest bidder, in the same manner and form as goods seized for rent are by law sold, rendering the surplus on demand, if any there be after payment of the said toll, and the costs of distress and sale, to the owner or owners thereof.

SEC. 12. *And be it further enacted*, That if Penalty for injuring any public work. any person shall break or throw down any embankment, or other work, lawfully erected by virtue of this act, or shall forcibly pass through any of the said canals or improved navigation, such persons, besides making good all the damages occasioned thereby, shall forfeit and pay in addition to the toll legally due, the sum of one hundred dollars, to be recovered by the said treasurer of the said corporation, to their use.

SEC. 13. *And be it further enacted*, That the president and directors may lay out and construct from the bridge at the Bayou settlement, a high-Company may construct toll roads. way or road on each side of the said Bayou, and that if such road or roads shall be constructed of shells, sands or other hard materials, and shall be at least of the breadth of twenty feet, and fit at all seasons for the passage of every kind of wheel carriages, and shall be so certified under oath, by three respectable persons or a majority of them, not interested in the said company, to be nominated by the governor of the territory, then the said president and directors may erect a toll gate on each of such roads, so soon as one league thereof shall be so certified to be completed as aforesaid, and that it shall and may be lawful for the person or persons appointed by the said president and directors to take and receive the following sums for passage through each of the said gates, that is to say,

Rates of toll.

For every man and horse six and a quarter cents

Cart, chair or cabriolet with one or more horses, twelve and a half cents.

Coach, phaeton, or other four wheeled carriage, twenty-five cents.

Shares reserved

SEC. 14. *And be it further enacted*, That one hundred shares in the said corporation, shall be reserved for the bank of Louisiana, and one hundred other shares for the city of New Orleans; provided the said bank and the said city shall signify their wish to subscribe for the same, within six months from the passing of this act.

Profits of the company not to exceed 50 per cent.

SEC. 15. *And be it further enacted*, That whenever the clear profit upon the monies actually paid to the said company upon each share of the capital stock thereof, shall exceed the amount of fifty per cent per annum, for three successive years, the excess of any profit arising thereafter, over and above the said fifty per cent, shall belong to the public exclusively, and shall be disposed of in such a manner as the legislature of the territory may direct.

President to transmit to the governor annually, a statement of receipts and expenditures of the company.

SEC. 16. *And be it further enacted*, That it shall be the duty of the president and directors of the said corporation, to transmit every year to the governor and legislative council of this territory, accounts signed by the said president, of the sums paid, and the dividends made during each year, on each share of the said capital stock of the said corporation.

SEC. 17. *And be it further enacted*, That the operations of the said company, shall be confined in the first instance, to the improvement of the inland navigation of the county of Orleans, and

of the Bayou Plaquemine; and that the said company are not nor shall be authorized to make, open or clear any other canal or navigation, without the consent and approbation of the governor of this territory for the time being previously obtained for that purpose, any thing in this act to the contrary notwithstanding.

What parts of the territory the company to improve.

J. POYDRAS,
President of the Council.

Approved—July 3d, 1805.

WILLIAM C. C. CLAIBORNE,
Governor of the territory of Orleans.

**AN ACT OF THE GENERAL ASSEMBLY OF
THE STATE OF LOUISIANA, APPROVED
MARCH 3, 1814 (ACT OF 1814,
P. 46).**

AN ACT

To restrict the powers of the Orleans Navigation Company.

Whereas the legislature of the state of Louisiana are advised and informed that it is the wish of a large majority of the stockholders of the Orleans Navigation Company that their chartered rights and powers should be so restricted as to be limited and confined to the island of Orleans.

Operations of the company limited.

Be it therefore enacted by the senate and house of representatives of the state of Louisiana, in general assembly convened, That the operations of

the said company shall be confined and restricted to the improvement of inland navigation of the Island of Orleans, any thing in the act entitled, "an act for improving the inland navigation of the territory of Orleans," to the contrary notwithstanding.

STEPHEN A. HOPKINS,
Speaker of the house of representatives.

J. POYDRAS,
President of the senate.

Approved, March 3d, 1814.

WILLIAM C. C. CLAIBORNE,
Governor of the state of Louisiana.

**ACT 309 OF THE GENERAL ASSEMBLY OF
THE STATE OF LOUISIANA OF THE
YEAR 1852 (ACTS OF 1852, P. 209).**

No. 309. AN ACT

Relative to the Orleans Navigation Company, the
Bayou St. John and Canal Carondelet.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That in the event of a final judgment of forfeiture being rendered in favor of the State of Louisiana against the Orleans Navigation Company, in the suit now or recently pending on appeal in the supreme court, it shall be the duty of the court in which said suit was instituted to proceed to the liquidation of the affairs of said navigation company in the manner hereinafter provided, to wit: the said*

Liquidation of the
Orleans Navigation
Company, how pro-
ceeded to.

court shall appoint a liquidating commissioner, who shall forthwith proceed to take possession of the entire property of said company, real and personal, moveable and immoveable, and to advertise and sell the same in block at public auction, after sixty days advertisement, to the highest bidder, payable one-tenth in cash and the remainder in equal annual instalments from one to twenty years; and the credit portion of the price to be paid in bonds bearing legal interest, divided into sums according to the directions of said commissioner, secured by mortgage and vendor's privilege on the property sold as aforesaid.

Appointment of a liquidating commissioner.

His powers.

SEC. 2. *Be it further enacted, &c.,* That immediately after the making said sale, it shall be the duty of said commissioner to file in said court a tableau of distribution of the proceeds of said sale, both cash and bonds, as well as of all monies collected by him for tolls during the interval between the taking possession and the sale, and the said proceeds and tolls shall be appropriated as follows, viz: First, to the expenses of liquidation, including a reasonable compensation to the toll collector; Secondly, to the payment of the debts of the company in the order of their rank; And thirdly, the surplus, if any, to the stockholders of said company, and all the proceedings in said liquidation and on said tableaux of distribution shall be the same as near as may be as in cases of insolvency of individuals.

Duties of the liquidating commissioner.

His tableau of distribution.

SEC. 3. *Be it further enacted, &c.,* That the said commissioner shall, before entering on the duties of his office, give a bond with security to the satisfaction of the court, for the sum of thirty thousand dollars, conditioned for the faithful discharge of his duty, and shall receive for his serv-

Bond to be given by the commissioner.

His salary.

ices, including that of making the auction sale aforesaid, a commission of two and a half per cent on the total amount of cash and bonds distributed under the tableau.

Conditions of the sale to be made by the liquidating commissioners.

SEC. 4. *Be it further enacted, &c.,* That it shall be a condition of said sale, that if the purchasers shall organize themselves into a corporation under the laws of this State, for a term of twenty-five years, for the purpose of carrying out and effecting all the improvements detailed and described in the reports and plans known as Harrison's reports and plans, including the construction of a new basin at the junction of Canal Carondelet and Bayou St. John, of the depth and dimensions set forth in said reports, and shall actually complete and effect all said improvements within the term of three years from the date of their charter, then the said corporation shall be entitled to receive and exact all such tolls and revenues for the use of said canal, bayou and road, as the Orleans Navigation Company was entitled to receive under its charter; Provided, that at the end of said term of twenty-five years the State of Louisiana shall have the option either of granting to said corporation a renewal of the right of receiving said tolls for a second term of twenty-five years, or of purchasing for itself the property and improvements of the company at the appraised value thereof; and provided further, that if said second term of twenty-five years be granted, the whole property shall revert to the State of Louisiana at the end of said second term without any payment or compensation made to said company.

Conditions on which a corporation formed under this act shall enjoy certain privileges.

SEC. 5. *Be it further enacted, &c.,* That any corporation formed under the provisions of the preceding section shall be entitled to demand and

receive said tolls from the time of its organization on furnishing bond to the satisfaction of the State treasurer in the sum of fifty thousand dollars, to secure the completion of all the improvements aforesaid within said term of three years.

SEC. 6. *Be it further enacted, &c.,* That if the works and improvements to be made by the purchaser be not begun within six months, and completed within five years, all the right, title and interest acquired by the said purchaser, under the provisions of this act, together with any improvements that may be made shall vest in and belong to the State.

Obligations imposed on the purchaser at the sale aforesaid.

JOHN E. KING,

Speaker of the House of Representatives.

J. B. PLAUCHE,

Lieutenant-Governor and President of the Senate.

Approved, March 18th, 1852.

JOSEPH WALKER,

Governor of the State of Louisiana.

**ACT 160 OF THE GENERAL ASSEMBLY OF
THE STATE OF LOUISIANA OF THE
YEAR 1857 (ACTS OF 1857, P. 143).**

No. 160.

AN ACT

To Incorporate the Carondelet Canal and Navigation Company of New Orleans.

The Carondelet Canal and Navigation Co. of New Orleans, incorporated.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That Wm. C. C. Claiborne, L. F. Génères, R. M. Davis, George Urquhart, W. W. Montgomery, R. Gardère, Henry St. Paul, Walter Nicol, P. H. Monsseaux, and all other persons who may associate with them by subscribing to the stock thereof, be and they are hereby created a body politic and corporate, and shall be designated and known by the name and style of the "Carondelet Canal and Navigation Company of New Orleans," and by such name and style shall sue and be sued, purchase, hold, sell, convey, contract, lease and release, grant, transfer and receive, and may do all things requisite and necessary for the purposes and objects hereinafter mentioned and set forth, and may perform all other acts, and shall exercise and enjoy all rights and privileges incident to similar corporations; they may make, adopt and use a common seal, which they may alter or renew at pleasure; they may make, ordain and publish by-laws, rules and regulations for the government of the corporation and the administration of the affairs thereof, not

Capital stock.

inconsistent with the provisions of this Act; the ^{Subscription there-} domicile of said corporation shall be in the city of New Orleans.

SEC. 2. *Be it further enacted, &c.,* That the capital stock of the said corporation shall not exceed five hundred thousand dollars, divided into shares of one hundred dollars each, which shall be subscribed and paid in the manner provided by the Board of Directors; provided, that at least five dollars per share shall be paid in by each subscriber at the time of subscribing.

SEC. 3. *Be it further enacted, &c.,* That this corporation shall have the right, power, and au- ^{Power of com-} thority to enter upon and take possession and control of the Canal Carondelet and Bayou St. John, for the purpose of completing the works of improvement thereon, undertaken and commenced by the "New Orleans Canal and Navigation Company," in pursuance of the provisions of the Act of the Legislature of the State of Louisiana, entitled "An Act relative to the Orleans Navigation Company, the Bayou St. John and Canal Carondelet, approved March 12th, 1852; provided, however, that the said New Orleans Canal and Navigation Company shall not be affected by anything ^{Proviso.} in this Act contained, in case the said company shall do and perform all things required to be done and performed by said Act above mentioned, in the manner and within the time prescribed in and by said Act; and provided, further, that in the event of the said New Orleans Canal and Navigation Company, failing to perform the requirements of said Act, in the manner and within the time ^{Proviso.} therein expressed and contemplated, the corporation hereby created shall, upon taking possession of the said Canal Carondelet and Bayou St. John for the purposes contemplated in this Act, ar-

Provide.

range, adjust, and liquidate the claims of the creditors of the said New Orleans Canal and Navigation Company, and of the stockholders in said company, for moneys expended by them in and about the works and affairs of said company, connected with the said Canal Carondelet and Bayou St. John, in the manner hereinafter expressed and provided; further, that the corporation hereby created may depart from the plan of the improvement of said Canal and Bayou, to which reference is made in said Act, designated as "Harrison's plan," so far as said plan proposes a basin at the junction of said Canal with said Bayou, and construction of a breakwater at the mouth of said Bayou at Lake Pontchartrain, in case a majority of the Board of Directors should determine that such works are not demanded by the interests, safety or convenience of commerce.

Proceedings in case
of forfeiture.

SEC. 4. *Be it further enacted, &c.,* That in the event of the failure of the said New Orleans Canal and Navigation Company to have ready and fully completed by the time required by law, all and every one of the improvements contemplated by the Act aforesaid of March 12th, 1852, and specified in the plan known as "Harrison's plan," and the consequent forfeiture of the charter, franchises and privileges of said New Orleans Canal and Navigation Company, (which forfeiture, sued for in the name of the State, shall be tried in preference over all other cases by any of the District Courts of New Orleans, and also on appeal by the Supreme Court; and during the pending whereof, the said New Orleans Canal and Navigation Company shall be prevented from collecting any tolls or dues whatever,) the property of said company, real and personal or mixed, including the interest in the Canal Carondelet and Bayou St.

John and the works and improvements done and effected thereon, and all machinery, boats, tools, implements and materials of whatsoever description necessary to be used in carrying on the works of the company, and real estate, acquired up to the present time, buildings and other property of said company in the city of New Orleans, shall be appraised at the true value thereof, by a Board of four Appraisers duly sworn and appointed as follows: two by the hereby appointed commissioners, their successors or a majority of them, and two by the New Orleans Canal and Navigation Company; and in case said appraisers should not agree upon the value of said property, then any two of them may apply by motion in open court to the Judge of the Fourth District Court of New Orleans, and said Judge shall forthwith appoint an umpire; and said appraisers, or a majority of them, shall make a due report of their appraisal, and said report shall be final and conclusive as soon as duly filed by them in the office of the Commissioners appointed by the present Act.

SEC. 5. *Be it further enacted, &c.,* That upon the return of the report of said experts, the actual and bona fide debtors of the said New Orleans Canal and Navigation Company shall be ascertained, and an amount of stock in this corporation at par value equal to the amount of such debt in the aggregate, shall be set apart and appropriated to the holder or holders of said debts, who may, at their option, receive the amount of their claims, respectively, in stock at the par value thereof, or in cash. The excess of the appraised value of the property of the said New Orleans Canal and Navigation Company, after providing for the payment of the debts of said company as aforesaid, shall be accounted for in the stock of the new cor-

Debts. how paid

Excess of value
of property. how
disposed of.



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Proviso.

poration at its par value, to be issued to the holders of the stock in the said New Orleans Canal and Navigation Company, pro rata, according to the amount which each of said stockholders has actually paid on the amount of stock held by him in the New Orleans Canal and Navigation Company; provided, that inasmuch as the said New Orleans Canal and Navigation Company has issued to Edward H. Durell and James Currie, five hundred shares of stock which by contract was to be unassessable for the works and improvements undertaken by said company, and has also, in pursuance of an amendment of the charter of said company, adopted November 25th, 1854, according to law, created and set apart a portion of stock to which preference has been given, the holders of said unassessable stock shall receive one-tenth part of said surplus, after providing for the debts of said company in the manner aforesaid, and the holders of said preferred stock shall receive eighty dollars per share, to be provided pro rata; the remainder of said stock shall be divided pro rata amongst the holders of the ordinary stock of said company.

Books of subscription.

SEC. 6. *Be it further enacted, &c.,* That the remainder of the stock of this corporation, after the appropriation and disposition mentioned in the next preceding section, shall be open to subscription. Books for subscription to the stock of this corporation shall be open in the office of this corporation, at such times and under such regulations as the commissioners herein named shall prescribe, until the whole amount of said stock shall have been subscribed.

Board of Commissioners, their duties.

SEC. 7. *Be it further enacted, &c.,* That Wm. C. C. Claiborne, L. F. Génères, R. M. Davis, George Urquhart, W. W. Montgomery, R. Gardère, H.

St. Paul, Walter Nicol and P. H. Monsseaux, shall be and they are hereby constituted a Board of Commissioners, whose duty it shall be to take charge of the property and effects of the said New Orleans Canal and Navigation Company, immediately upon the forfeiture of the rights and franchises of said company, in pursuance of the said Act of March 12th, 1852, to receive the report of the said experts, to arrange and adjust the claims of the creditors and stockholders of said company in accordance with the provisions of section fifth of this Act, to open books for subscription to the stock of this corporation and receive such subscriptions, and close the same when the whole amount of said stock shall have been subscribed, and to do all things necessary for the proper organization of this company. They shall also constitute and be clothed with all the powers of a Board of Directors of this corporation, and shall hold office and exercise the functions of such Board until the third Monday of January, eighteen hundred and fifty-nine, unless sooner removed, or they or either of them shall vacate said office, and until their successors shall have been duly elected as provided in this Act. A majority of the Board of Directors shall constitute a quorum.

Said Commissioners to be clothed with the powers of a Board of Directors, until a certain time.

Quorum.

SEC. 8. *Be it further enacted, &c.,* That the business of this corporation shall be conducted by a Board of Directors, nine in number, who shall be stockholders. They shall, immediately after their election, choose one of their number President, who shall be styled and recognized as President of the company. The Commissioners herein named, who shall constitute the first Board of Directors, as in the next preceding section provided, shall elect one of their number President. The election of the Directors shall be held annually by

Election of Board of Directors.

the stockholders, on the third Monday in January. The first election of Directors shall take place on the third Monday in January, eighteen hundred and fifty-nine; at all elections of Directors, and at all other meetings of stockholders, each share of stock shall be entitled to one vote. The votes in all cases may be cast by the stockholders in person or by proxy.

By-laws to be adopted.

SEC. 9. *Be it further enacted, &c.,* That the Commissioners named in section eighth of this Act, shall, as soon as practicable after the organization of this corporation, make, ordain and publish a system of by-laws, rules and regulations for the government of this corporation and the administration of the affairs thereof. They shall, in

Meetings of Directors and Stockholders.

such by-laws, designate the time of holding meetings of the Directors and of the stockholders, and the manner in which notice of stockholders' meetings shall be given: provided, meetings of the Board of Directors shall be held at least once in every month, and stockholders' meetings shall be held at least annually, on and after the third Monday in January, eighteen hundred and fifty-nine: provided further, that notice of every special or called meeting of the stockholders shall be published in at least one newspaper published in the city of New Orleans, for four consecutive weeks, at least once in each week next preceding the time named for such meeting.

Notice for called meetings.

Privileges of Corporations.

SEC. 10. *Be it further enacted, &c.,* That this corporation may and can take and receive, possess, hold and enjoy, all and singular the rights, privileges, franchises, immunities, powers and authority which were at any time granted to, received, possessed, enjoyed and exercised by the late "Orleans Navigation Company," under sections nine, ten, eleven, twelve and thirteen, of an

Act entitled "an Act for the improving the Inland Navigation of the Territory of Orleans," approved July third, one thousand eight hundred and fifty, as well as those exercised and enjoyed at this time by the said New Orleans Canal and Navigation Company, by Act approved March twelfth, one thousand eight hundred and fifty-two; and the said Commissioners shall also have the power to enter into any compromise with the New Orleans Canal and Navigation Company, by which said New Orleans Canal and Navigation Company may agree to transfer, previous to the time at which their charter might incur forfeiture, all their rights and privileges; and said company shall further have the right to mortgage the said canal, and any work or property by them possessed, and issue bonds to that effect; shall be exempted from municipal taxation for three years after the passage of this Act on the said Canal and Bayou St. John, and shall in fine be invested with all and singular such other and further rights, privileges, franchises, immunities and powers, as are incident to corporations organized under the laws of this State, and which necessarily and lawfully arise, result and accrue to the corporation hereby created for the purposes expressed and contemplated in and by this Act: provided, that this corporation shall assume all and singular, the obligations, duties and responsibilities assumed by, and imposed upon the New Orleans Canal and Navigation Company, in pursuance of the Act of the Legislature, approved March twelfth, one thousand eight hundred and fifty-two, entitled "an Act relative to the Orleans Navigation Company, the Bayou St. John, and Canal Carondelet," except in so far as the provisions of said Act are modified or changed in and by this Act.

Certain compromise authorized.

Company authorized to mortgage the canal and other property.

Exemption from taxation.

Powers and privileges of company.

Proviso.

Vacancy among
Commissioners, how
filled.

Directors to con-
tinue in office until
their successors are
chosen.

Vacancy in Board
of Directors, how
filled.

SEC. 11. *Be it further enacted, &c.,* That in the event that any one or more of the Commissioners in this Act named, shall refuse to act, or shall from any cause be prevented from performing the duties herein required of said Commissioners, it shall be the duty of the remaining of said Commissioners to supply such vacancy or vacancies. A failure to elect Directors shall not dissolve the corporation, but the Board in office shall continue to exercise its functions until a new Board shall be elected, and any vacancy in the Board of Directors occurring in the interval between elections, may be filled by the Board in office for the time being.

Relative to de-
faulting stockhold-
ers.

SEC. 12. *Be it further enacted, &c.,* That in case of failure on the part of any subscriber to pay the instalments on his stock as may be required, the Board of Directors shall have the option, after thirty days notice to the defaulter, of declaring his stock forfeited, and selling it for the benefit of the company, or compelling by suit the payment of such instalments; and no stockholder shall be permitted to vote on any question whilst in default.

Quorum of stock-
holders.

SEC. 13. *Be it further enacted, &c.,* That all meetings of stockholders called for the purpose of increasing or diminishing the capital stock of the company, or for borrowing money upon the Bonds of the company, shall be composed of persons holding in their own right, or as agents for others, at least two-thirds of the stock of the company, in order to take valid and binding action in the premises. At all other meetings of stockholders, and at all elections, a majority of the capital stock of the company shall be represented; and in the latter case, if such majority be not present nor represented, the meeting shall be ad-

journed for ten days, and the vote of the majority of the stock presented and represented at such adjourned meeting, shall bind the company in the same manner as if a majority of all the stock were present and represented.

SEC. 14. *Be it further enacted, &c.,* That the President and Directors of the said corporation shall have power to make and use a common seal, and to do everything necessary for the construction, repair and maintenance of the improvements of the navigation of the canal and bayou hereinbefore described, as well as for the construction of docks, wharves, and other improvements deemed necessary, and for the purpose of speedily and properly making said improvements, to purchase all machines, and other equipments deemed by them necessary or useful to the purposes of the company; to appoint a Secretary, Attorney, Treasurer, Superintendent, and other officers and servants necessary or proper for the faithful performance of any duty necessary to the proper maintenance of the said improvements; to fix the rate of tolls thereon; to make rules and regulations and other by-laws deemed necessary for the proper, safe and regular transaction of the business of the company. But such rules and regulations shall be subject to repeal or amendment by a majority of the stockholders, at their meetings, or by the President and Directors in the interval. They shall declare the dividends arising from said improvements, after payment of all necessary expenses, and they shall keep, or cause to be kept, a regular set of books, in which shall be entered all the business transactions of the company.

Powers and duties of the President and Directors.

SEC. 15. *Be it further enacted, &c.,* That stock books shall be kept at the office of the company;

Stock books.

Transfer of stock.

Script to be issued
to subscribers.

Certificate of stock
to be furnished stock-
holders.

Dividends.

Power to borrow
money.

Directors may
make certain con-
tracts.

Statement to be
laid before the an-
nual meeting of the
stockholders.

certificates of stock shall be issued to the shareholders, and no transfer of stock shall be binding on the company until made in its stock book. No transfer of stock shall exempt the party transferring it from the obligation of paying instalments previously called for, and no stockholder shall be permitted to vote at any meeting of the stockholders unless he become a stockholder on the books of the company at least thirty days previous to such meeting. Scrips shall be issued to each subscriber to stock, which shall indicate the number of shares subscribed and the amount paid on each share, at each instalment, and in case the whole number of shares subscribed for by any subscriber shall not be required to be paid, to the full amount of one hundred dollars for each share, such subscriber shall only be entitled to receive a certificate of stock for the number of shares for which he shall have actually paid, at the rate of one hundred dollars each.

SEC. 16. *Be it further enacted, &c.,* That dividends of the profits accruing to the company shall be declared by the directors, at such times as they may determine, payable at New Orleans; provided that if the condition of the affairs of the company will admit, such dividend shall be declared at least once in each year.

SEC. 17. *Be it further enacted, &c.,* That no money shall be borrowed by the said company, unless authorized by a vote of two-thirds of the stock represented, at a meeting regularly called of the stockholders. But the Board of Directors may contract for the purchase of land, machinery, materials, and other necessary supplies, or labor, on such terms as they may deem proper.

SEC. 18. *Be it further enacted, &c.,* That at the annual meeting of the stockholders, on the third Monday in January, statements of the financial and other affairs of the company shall be laid

before the meeting by the President and Directors then in office. The President and Directors may call other meetings when they may think proper, and it shall be their duty at any time, on the requisition in writing of stockholders representing one-fifth of the stock of the company, to call a meeting of the stockholders, to take into consideration any matters affecting the interest of the company.

SEC. 19. *Be it further enacted, &c.,* That this corporation shall be and they are hereby required to complete the works prescribed in and by the Act entitled "An Act relative to the Orleans Navigation Company, the Bayou St. John and Canal Carondelet," approved March 12th, 1852, within three years from and after the 17th day of October next (1857), subject, however, to the modifications of said Act herein contained, and in the event that this corporation shall fail to complete said work in the manner aforesaid, and within the time mentioned in this section, the entire property, with all the improvements and ameliorations thereon, franchises, rights, privileges and immunities granted in and by this Act shall cease, determine and be forfeited to and become the property of the State of Louisiana.

SEC. 20. *Be it further enacted, &c.,* That this corporation shall have existence for and during the term of twenty-five years from and after the 17th day of October next; provided that the State of Louisiana shall have the right to take possession of said Canal Carondelet and Bayou St. John, and all the property and improvements connected therewith, at the expiration of the term above mentioned, should the Legislature determine so to do, upon paying to this corporation the value of said property, to be appraised by five competent persons, as experts, two to be appointed by this

How meetings of stockholders and directors may be called.

Forfeiture in case certain works are not completed within a certain time.

Duration of corporation.

In what manner the State may take possession of said canal and bayou.

In case the State should not take possession, charter extended.

At what time the said property shall become the property of the State.

Commissioners to liquidate affairs of the corporation.

Duty of Attorney General.

corporation and two by the Governor, and the four thus appointed shall appoint a fifth; said experts shall be required to take an oath to discharge their duty faithfully. In the event that the State shall not determine to take possession of said property, as herein provided, then this corporation shall be in existence for twenty-five years from and after the expiration of the term in this section mentioned aforesaid, and at the end of such second term of twenty-five years, the said property may still become absolutely the property of the State of Louisiana, and no compensation required to be made to this corporation.

SEC. 21. *Be it further enacted, &c.,* That at the expiration of the charter, or whenever the dissolution of the corporation shall render necessary its liquidation, three Commissioners shall be elected by the stockholders, at a meeting convened for that purpose, whose duty it shall be to take possession of the property of the company, and conduct its business to a final liquidation, on such terms and in such manner as shall then be determined.

SEC. 22. *Be it further enacted, &c.,* That the Attorney General is hereby required, in case the New Orleans Canal and Navigation Company should not, by the 17th day of October, 1857, have fully complied with the fourth section of this bill, to institute proceedings for the forfeiture of their charter, if required to do so by a majority of the commissioners appointed by this Act.

WM. W. PUGH,

Speaker of the House of Representatives.

C. H. MOUTON,

Lieutenant Governor and President of the Senate.

Approved March 16th, 1857,

ROBERT C. WICKLIFFE,

Governor of the State of Louisiana.

A true copy,

ANDREW S. HERRON,

Secretary of State.

**ACT 74 OF THE GENERAL ASSEMBLY OF
THE STATE OF LOUISIANA OF THE
YEAR 1858 (ACTS OF 1858, P. 46).**

No. 74.]

AN ACT

Relative to the Carondelet Canal and Navigation
Company, of New Orleans.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,* That the Carondelet Canal and Navigation Company of New Orleans shall have the right to construct lay-outs, basins, and half-moons, for steam or any other water-crafts, at any point they may deem convenient on the Bayou St. John, the basin, and Canal Carondelet; and to extend the said lay-outs, basins, and half-moons, on any part or portion of the road, streets, or neutral grounds through which run their navigable waters; *Provided*, they shall furnish the public with the roads required by law, along and around said lay-outs, basins, and half-moons, of the width as existing at the time of such extension; and keep the same, subject to the ordinances of the Common Council of New Orleans.

Company authorized to construct certain works.

Proviso.

SEC. 2. *Be it further enacted, &c.,* That the said Company shall have the right to construct a railroad, with single or double track, on either side of their basin, canal, and the Bayou St. John, from the head of the said basin, on Toulouse Street, to the lake end, with the privilege of passing through such private property and lands as may be needed, upon due compensation made to the owners thereof, in conformity with existing laws; and they shall be authorized to transport,

Company authorized to construct a railroad.

Proviso.

on said road, freight and passengers for hire; *Provided*, They shall not employ steam locomotives on said road, within such limits of the city as the Common Council of New Orleans may prescribe; and that the said road shall be subject to such general police regulations as are now or may hereafter be adopted by said Council.

Prohibition against draining into Bayou St. John.

SEC. 3. *Be it further enacted, &c.*, That after the expiration of five years from the passage of this act, the city corporation shall be prohibited from draining into Bayou St. John; and should said city continue to drain into said bayou after the expiration of the term aforesaid, then, only, upon due indemnity being made for any injury which shall be made to appear to result there-said Company shall have the sole and exclusive from; said indemnity to be determined by three experts, to be appointed—one by the city corporation, one by the Company, and one by any of the District Judges of New Orleans. And the city corporation shall further have the right to build bridges over said canal and bayou, at distances not less than every five squares; *And provided further*, That the bridges now existing opposite Marais and Claiborne streets shall not be affected by this clause, but must be so constructed as not to prevent the free ingress and egress of vessels.

Indemnity—damage how ascertained.

Right of the city corporation to build bridges over canal and bayou.

Corporate succession during fifty years, when the same may revert to the State.

SEC. 4. *Be it further enacted, &c.*, That the said Company shall enjoy corporate succession during fifty years from this date; after which time it may revert to the State, upon due compensation being made according to award, by three commissioners, one appointed by the Governor of the State, one by the Company, and the third by any Court of Record of New Orleans.

Right to grant special privileges.

SEC. 5. *Be it further enacted, &c.,* That the right to grant the special privilege of towing vessels, schooners, or rafts on their waters, for any length of time they may deem proper.

SEC. 6. *Be it further enacted, &c.,* That the said Company shall have exclusive power to follow and carry out their works in conformity with such plan or plans as they may at any time adopt, and deem best calculated to forward the interests of commerce; *Provided*, That this section shall not authorize the said Company to use or interfere with any of the streets or highways of the city, without the consent of the Common Council of the city of New Orleans.

Exclusive powers granted.

Proviso.

SEC. 7. *Be it further enacted, &c.,* That the Directors of the Company shall have the right to impose fines, not exceeding fifty dollars, for each and every daily violation of their rules and ordinances, recoverable before any judge of competent jurisdiction.

Power to impose fines.

SEC. 8. *Be it further enacted, &c.,* That a majority of two-thirds of the Board of Directors, with the consent of two-thirds of the stockholders, shall have power to issue the bonds of the corporation, bearing any interest not exceeding twelve per cent. per annum, and the capital payable in instalments from one to thirty years, according to the directions of the Board; and for the security of the said bonds, said Company is hereby authorized to specially effect, hypothecate, and mortgage all its property, privileges, and immunities whatever; *Provided, however*, That the amount of bonds thus issued shall never exceed two hundred and fifty thousand dollars, and shall be exclusively employed in the improvement of their navigation, and in the building of the railroad herein before authorized.

Power to issue bonds secured by mortgage.

Exemption from
taxation.

SEC. 9. *Be it further enacted, &c.,* That said canal and railroad shall be exempted from taxation, during the period of fifty years.

When this act
takes effect.

SEC. 10. *Be it further enacted, &c.,* That this act shall be in force from and after its passage.

WM. W. PUGH,

Speaker of the House of Representatives.

WM. F. GRIFFIN,

President pro tem. of the Senate.

Approved March 10th, 1858.

ROBERT C. WICKLIFFE,

Governor of the State of Louisiana.

A true copy.

ANDREW S. HERRON,

Secretary of State.

**ACT 86 OF THE GENERAL ASSEMBLY OF
THE STATE OF LOUISIANA OF THE
YEAR 1884 (ACTS OF 1884, P. 113).**

No.86.]

AN ACT

To repeal Act No 160, entitled "An Act to incorporate the Carondelet Canal and Navigation Company of New Orleans," approved March 16th, 1857; also, to repeal Act No. 74, entitled "An act relative to the Carondelet Canal and Navigation Company, of New Orleans," approved March 10, 1858; also, to authorize the Governor to appoint experts to value the property of the Carondelet Canal and Navigation Company; also, to direct the Governor to take possession of the Bayou St. John and Canal Carondelet, and to appoint Commissioners to superintend the same.

SECTION 1. *Be it enacted, by the General Assembly of the State of Louisiana,* That Act No.

160, entitled, "An act to incorporate the Carondelet Canal and Navigation Company of New Orleans," approved March 16th, 1857; and also Act No. 74, entitled "An Act relative to the Carondelet Canal and Navigation Company of New Orleans," approved March 10, 1858, be and the same are hereby repealed.

SEC. 2. *Be it further enacted, etc.,* That the Governor be authorized and directed to appoint two or more experts to appraise and value the property of the said Carondelet Canal and Navigation Company of New Orleans.

Repeal of Act No. 160, of 1857, and Act No. 74, of 1858.
Experts to be appointed by the Governor and to appraise the property of company.

SEC. 3. *Be it further enacted, etc.,* That the Governor be directed and authorized to take possession of the Bayou St. John and the Carondelet Canal, in the name of the State of Louisiana, on the 17th day of October, 1884, or as soon thereafter as possible, and he shall appoint three commissioners, who shall have full power to superintend, administer, manage, and conduct the affairs of the Bayou St. John and Canal Carondelet to the best interest of the State of Louisiana.

Commissioners to be appointed by the Governor to take possession of canal, with power to superintend, administer and manage the same.

SEC. 4. *Be it further enacted, etc.,* That all laws or parts of laws in conflict with this act are hereby repealed.

SEC. 5. *Be it further enacted, etc.,* That this act shall take effect from and after its passage.

H. W. OGDEN,

Speaker of the House of Representatives.

CLAY KNOBLOCH,

Lieut. Governor, and President of the Senate.

Approved 10th July, 1884.

S. D. MCENERY,

Governor of the State of Louisiana.

A true copy from the original:

OSCAR ARROYO,

Secretary of State.

**ACT 77 OF THE GENERAL ASSEMBLY OF
THE STATE OF LOUISIANA OF THE
YEAR 1906 (ACTS OF 1906, P. 117).**

By Mr. Louque.

Senate Concurrent
Resolution No. 2.

RESOLUTION

Ratifying the agreement entered into between the Governor and Attorney General of this State, the New Orleans Terminal Company and the Carondelet Canal and Navigation Company, on the 12th day of November, 1904.

Whereas, the Governor and the Attorney General of this State has entered into a tri-party agreement with the Carondelet Canal and Navigation Company and the New Orleans Terminal Company, a copy of which is hereto annexed:

Be it resolved by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the agreement entered into on the 12th day of November, 1904, between the Governor and Attorney General of this State, the New Orleans Terminal Company and the Carondelet Canal and Navigation Company be and the same is hereby approved and ratified in all its parts, said agreement being as follows, to-wit:

State of Louisiana,
Parish of Orleans.

This agreement entered into this 12th day of November, 1904, by and between:

First—The New Orleans Terminal Company, hereinafter called the "Terminal Company," herein represented by Louis S. Berg, its president, un-

Ratifying the agreement between the Governor, Attorney General, New Orleans Terminal Company and Carondelet Canal and Navigation Company.

der the authority of a resolution of the Board of Directors of said Company, adopted at its meeting of September 3, 1904, a certified copy of which is annexed to and made part of "the original" of this agreement, which is deposited with the Governor of the State of Louisiana.

Second—The Carondelet Canal and Navigation Company, hereinafter called the "Canal Company," herein represented by George L'Hote, its president, under the authority of a resolution of the Board of Directors of said company, adopted at its meeting of September 21, 1904, a certified copy of which is annexed to and made part of "the original" of this agreement, which is deposited with the Governor of the State of Louisiana.

Third—The State of Louisiana, hereinafter called the "State," herein represented by his Excellency, Newton C. Blanchard, Governor, and the Hon. Walter Guion, Attorney General, both acting subject hereafter to the ratification of the Legislature of the State of Louisiana.

WITNESSETH.

Whereas, the Terminal Company has taken proceedings in the Civil District Court for the Parish of Orleans to expropriate a certain triangle of ground, bounded by Villere, Toulouse, Robertson and Carondelet Walk, claimed by the Canal Company, on which the office of said company is now situated, and to expropriate all the right, title and interest, whatever it may be, of the Canal Company in the southwest corner of the Basin, according to the plan, a copy of which is annexed to and made part of the original of this agreement, deposited as aforesaid, and,

Whereas, there is a controversy between the State and the Canal Company which can not well

at this time be settled and which the parties do not at this time wish to prejudice, relative to their respective rights and claims in and to the property and rights sought to be expropriated, and relative to their respective rights and claims in and to the Canal Carondelet and its appurtenances, and,

Whereas, the Board of State Engineers, at the request of the Governor, have examined into the necessity of the taking of the property aforesaid for the use of said Terminal Company, and have made a report thereon, which annexed to the original of this agreement, recommending that such taking be permitted; and have also prepared plans and specifications showing what changes are to be made in the arrangement of the Basin, so as to permit said taking, and what work is to be done in carrying out said plans and in what manner said work shall be done, a copy of which plans and specifications, signed by the president of said board, are annexed to and made part of the original of this agreement, deposited with the Governor of the State of Louisiana; and,

Whereas, the Legislature is not now in session and will not assemble for two years, and the State Executive is of opinion that the public interest will be promoted by permitting such taking now, under proper safeguards to the ultimate interests of the State, and subject to the ratification of the Legislature of the State;

Now, therefore, it is agreed by and between the parties as follows:

1. That on the deposit by the Terminal Company in the hands of the Hibernia Bank and Trust Company, as trustee, of the sum of three thousand dollars (\$3,000), the agreed value of the triangle aforesaid, and on the payment to the Canal

Deposit to be made with Hibernia Bank and Trust Company for value of property and damages.

Company of the sum of five hundred and twenty-five dollars (\$525), as damages, the Canal Company shall execute to the New Orleans Terminal Company a deed without warranty, except as to its own acts and those of the State, to the triangle of ground aforesaid.

2. That the condition of said deposit with the trustee, aforesaid, shall be that until it shall be Condition of deposit. determined whether said sum shall be paid to the Canal Company or to the State the annual interest of three per cent. accruing thereon in the hands of the trustee, shall be paid to the Canal Company, and that the trustee shall finally pay and deliver the principal of said sum either to the Canal Company or to the State, according as the final determination of the question may be.

3. That nothing in this agreement is in any manner to weaken or impair the claim of the Carondelet Canal and Navigation Company to the effect that it has the absolute right at this time, under its charter and under its relations to the State, to remove its office from said triangle and to sell and dispose of said triangle, and to receive and convert to its own use the proceeds of the sale thereof, and that the State has not any sort of claim to said property or its proceeds; but the State does not recognize, acknowledge or admit that the Carondelet Canal and Navigation Company has the right, under its charter and under its relations to the State, to remove its office from said triangle and to sell and dispose of said triangle, and to receive and convert to its own use the proceeds of the sale thereof, nor does the State admit that it is without right to claim said property or its proceeds.

Rights of Carondelet Canal Company reserved.

Terminal Com -
pany to be per-
mitted to begin work
upon payment of
damages.

4. That the Terminal Company shall upon the payment to the Canal Company of the sum of seventeen hundred and fifty dollars (\$1750) as damages for interference with its business and deprivation of use, be permitted to enter upon and construct its tracks across the southwest corner of the Basin, making part of the Canal Carondelet, in accordance with the said plan hereto, annexed and made part of the original agreement.

Canal Company to
take steps to expro-
prietate additional
property.

5. That the Canal Company shall immediately take steps to acquire, by purchase or by expropriation, or otherwise, the square of ground bounded by St. Peter, Basin and St. Claude Streets and Carondelet Walk, as well as, and particularly all, that part of Carondelet Walk between said square of ground and the Old Basin, of the same width as that of said square of ground and the triangular piece of ground on the west side of the Basin at the entrance of the canal to the same, indicated by the letters "H," "I," "J," "H," on map No. 2, forming part of said plans and specifications aforesaid, so as to permit the enlargement of said Basin by extending it to St. Peter street the whole width of said square between St. Claude and Basin streets, and the excavation and revetting of the triangle aforesaid.

Terminal Company
to furnish funds to
pay for such prop-
erty.

6. That the Terminal Company shall furnish the Canal Company with the funds necessary to pay for said property and the cost of expropriation and any other sum necessary to make said square and said triangle available for basin purposes, but the Terminal Company shall have no claim for reimbursement of the amount so expended either against the State or the Canal Company; it being understood that the amount so furnished and paid by the Terminal Company

for said purpose shall be regarded as part of the consideration given by it for the right of way in the laying of its tracks over the Old Basin, as per plan herein referred to.

7. That on the demand of the said Canal Company at any time, or of the State hereafter, when it shall obtain possession of said canal and basin, the Terminal Company shall furnish the funds necessary to pay the cost of excavation and revetting the extension of the basin into and over the said square of ground and the intervening street and the triangle aforesaid according to said plans and specifications prepared by the Board of State Engineers. It is understood, however, that the Terminal Company shall have no claim against the State or the Carondelet Canal and Navigation Company for reimbursement of the amount so expended but that said amount shall be considered as having been paid and disbursed in part consideration of the right of way granted to the Terminal Company over the Old Basin for the laying of its tracks, as per plan herein referred to.

Further costs to be paid by Terminal Company.

8. That in the settlement between the State and the Canal Company, whenever it may be made, of their respective claims and demands, the sum of money furnished by the Terimnal Company and expended for the acquisition of said square of ground as herein provided, and for the excavation and revetting thereof and the intervening street, or for the acquisition and excavation of said triangle, or any additional costs and expenses that may be incidental thereto, such as filling the space indicated on said plans, shall not be in any manner credited to the Canal Company and charged against the State; and said property, with the excavation and revetting and filling of

Same.

the same, shall be considered as much a part of said canal and its appurtenances as if it had constituted a part thereof at the time the said Carondelet Canal and Navigation Company went into possession of the same.

Relation of the
State and the Canal
Company in settle-
ment.

9. That if the State shall be held at the time of the settlement between it and the Canal Company to pay the Canal Company a sum to be awarded by appraisers, the said appraisers shall act as if this agreement had not been made relative to said basin and shall make their valuation of said canal and basin and its appurtenances as if the said basin were in the shape that it now is, and as if the improvements executed and constructed by it on the space occupied by the Terminal Company and on the other parts of said basin covered by said plans and specifications were then in existence. It is understood, however, that the State does not recognize, acknowledge or admit that there is or will be any obligation on its part to pay to the said Canal Company any amount for such improvement as may have been made, either in that part of the basin to be taken by the Terminal Company in any other part of the basin or canal

Same.

10. That nothing in this agreement shall be held to bar as between the State and the Canal Company, any of the claims of the Canal Company under the grants made to it by various acts of Congress of the United States, but the State does not acknowledge or admit that the Canal Company has or will be entitled to any claim against it, under any grants whatever made to the Canal Company by the Congress of the United States.

11. That everything herein agreed upon between the parties on behalf of the State by the Governor and Attorney General shall be subject to the ratification of the General Assembly of the State of Louisiana at the next session thereof in 1906, and if said General Assembly shall fail to ratify this agreement, or if the parties should fail to accept any modification hereof which said General Assembly may make, then this agreement shall be null and void and of no effect, and the parties shall be placed as if this agreement had never been made.

Agreement subject
to ratification of
General Assembly.

12. That within ten days from the date hereof the Terminal Company shall file with the Governor of the State, as a necessary condition hereof, its bond with a surety company authorized to do business in this State, to be approved by the Governor in the sum of twenty-five thousand dollars (\$25,000.00) in favor of the State and the Carondelet Canal and Navigation Company, conditioned that the Terminal Company shall well and truly comply with this agreement and pay all sums required to be paid by it under this agreement for the square of ground and the triangle aforesaid, and for the excavation and revetting of the same and the cost of expropriation and any other sum necessary to make said square available for basin purposes, according to said plans and specifications of the Board of State Engineers, provided that said bond shall be so conditioned that the State and the Canal Company shall each have and be entitled to a separate right of action thereon for the enforcement of the obligations therein assumed and undertaken. In the event that such a bond as is hereby provided is not given within the aforesaid delay, this agreement

Bond to be filed by
Terminal Company.

shall be null and void and of no effect in every respect and particular.

13. That in the settlement between the State and the Canal Company, whenever it may be made, Canal Company to have no claim against State for property disposed of. of such claims and demands as may be respectively urged by them, the one against the other, the Canal Company shall have no claim whatever against the State on account of its being deprived of the possession and use of that portion of the basin, the southwest corner thereof, by reason of the taking of the same by the Terminal Company in the laying and constructing of its tracks over and across said Basin, according to the plan herein referred to.

14. That in consequence and in consideration of the foregoing, the Terminal Company is to dismiss Terminal Company to dismiss appropriation suits. at its own cost, the two expropriation suits pending in the Civil District Court which are to be considered as compromised and settled.

Signatures.

Thus done and signed, in quadruplicate originals, on the day and date above written, in the presence of Frank M. Kerr and Edward D. Ellis, competent witnesses, one of which quadruplicates, styled "The Original," with the documents herein mentioned annexed, is to be deposited with the Governor of the State of Louisiana.

Original signed:

NEW ORLEANS TERMINAL CO.,

By L. S. Berg, President,

CARONDELET CANAL & NAV. CO.,

By George L'Hote, President.

WALTER GUION, Attorney General.

NEWTON C. BLANCHARD,
Governor of Louisiana.

FRANK M. KERR.

EDWARD B. ELLIS.

J. Y. SANDERS,

Lieutenant Governor and President of the Senate.

J. W. HYAMS,

Speaker of the House of Representatives.

Approved July 4th, 1906.

NEWTON C. BLANCHARD,
Governor of the State of Louisiana.

A true copy:

JOHN T. MICHEL,
Secretary of State.

**ACT NO. 161 OF THE GENERAL ASSEMBLY
OF THE STATE OF LOUISIANA OF THE
YEAR 1906 (ACTS OF 1906, P. 305).**

ACT NO. 161.

By Mr. Louque.

Senate Bill No. 89.

AN ACT

To Provide for the appointment of a Board of Control to assume the management of Bayou St. John and the Carondelet Canal and to provide for their powers and duties.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That there shall be appointed by the Governor by and with the advice and consent of the Senate, a Board of Control for the Bayou St. John and Carondelet Canal and Old Basin to be composed of five members, not less than three of whom shall reside in the

Creating Board of Control for the Bayou St. John and Carondelet Canal; how appointed.

parish of Orleans and two of whom shall reside in the parishes of Livingston, Tangipahoa and St. Tammany; they shall serve for four years from the date of their appointment and until their successors are qualified; they shall elect one of their number as chairman and three members shall constitute a quorum; they shall elect a secretary who shall perform such other duties as may be required of him by the Board, and whose salary shall not be more than one thousand dollars per annum; the books, minutes and documents of the Board shall be open to the inspection of the public; said Board shall constitute a body politic and corporate; their domicile shall be in the parish of Orleans; the Attorney General shall be their legal adviser and they shall be dispensed from giving bond and advancing costs in legal proceedings; they shall meet at least once a month and may hold special sessions whenever called by the chairman and also at the written request of any two members of the Board; they shall serve without compensation, but the members residing outside of the parish of Orleans may have their actual traveling expenses, to attend the sessions of the Board and no more, paid by the Board.

Meetings; records
to be kept; secre-
tary; his salary.

Authority of Board.

SECTION 2. Be it further enacted, etc., That said Board shall have the control and management of the Bayou St. John Carondelet Canal and Old Basin, and shell road appurtenant thereto; they shall direct all repairs and improvements and contract for the necessary material and labor, in the most economical manner possible; they shall be authorized to lease whatever property belongs to the canal, not necessary for its mainagement; they shall elect such officers and employ such assistants as in their judgment may be necessary to administer the affairs of said canal, to-wit:—a

Superintendent;
his salary.

superintendent at a salary of one hundred and twenty-five dollars per month, provided no other salary shall exceed sixty dollars per month; they may exact such bond from their officers and employees as they may judge necessary and may remove them for cause.

SECTION 3. Be it further enacted, etc., That said Board shall regulate the tolls to be paid by Board to regulate tolls to be paid. vessels using the bayou and canal and the vehicles using the shell road. They shall have the right to make such rules and regulations, not inconsistent with existing laws, and to adopt a system of fines to enforce their regulations, provided no fine imposed shall exceed ten dollars.

SECTION 4. Be it further enacted, etc., That the moneys arising from the tolls, towage, shell road and from any other source shall constitute a fund to be known as the Bayou St. John and Carondelet Canal fund and shall be kept separate and apart from other funds of the State, and shall be deposited daily in one of the banks in New Orleans, designated by the Board. How funds are to be kept.

SECTION 5. Be it further enacted, etc., That the secretary shall weekly furnish to the Governor a sworn statement of all amounts received, of the names, tonnage and arrival of all vessels, of the departure of same, of the daily tolls received and the amounts deposited in bank, and of the detailed expenditures and he shall furnish such further information as may be required by the Governor. Records to be kept by Secretary and report to be made to Governor.

SECTION 6. Be it further enacted, etc., That the Governor shall have the right and it shall be his duty to dismiss from office any member of said Board for incompetency, neglect of duty, Governor authorized to remove members of Board.

malfeasance or nonfeasance and to appoint a successor who shall immediately take possession of said office.

Board authorized to expropriate property, and to have the use of streets adjoining canal.

SECTION 7. Be it further enacted, etc., That said Board shall have the right and they are hereby empowered to expropriate such property, including public streets, as in their judgment may be needed for the purposes of the Canal, Bayou St. John and Old Basin, and they are further allowed the use of such streets of the city of New Orleans as adjoin the Canal and Old Basin, and no railroad shall make any use of same, and the Common Council of the city of New Orleans is hereby prohibited from granting to any railroad company the right to lay tracks upon Basin Street from St. Louis to St. Peter Streets, or upon any other street of the city whereby the use of said Canal and Basin may be interfered with or obstructed.

Tolls may be discontinued on shell road.

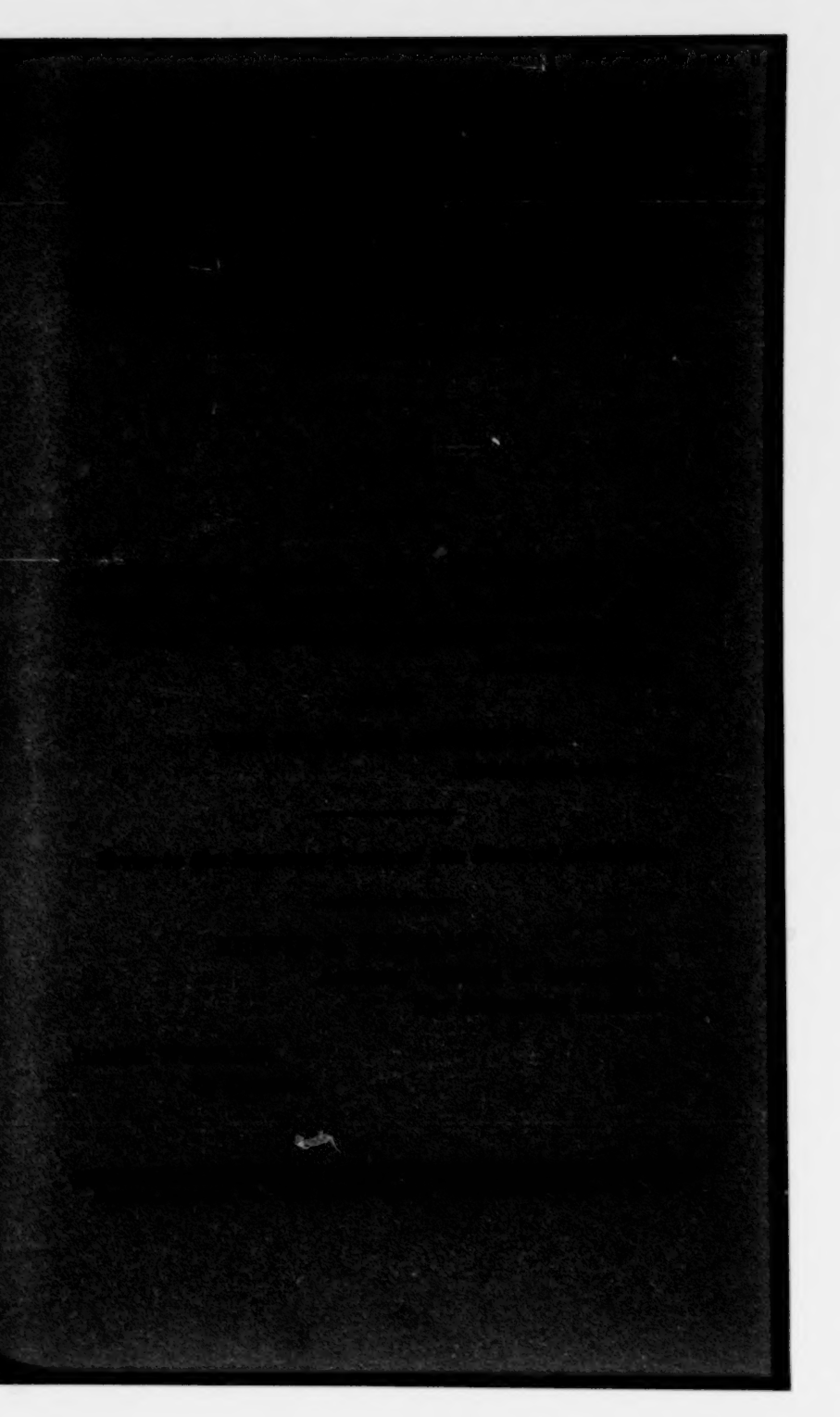
SECTION 8. Be it further enacted, etc., That said Board shall have the right and it shall be required to discontinue the collection of tolls for the use of the shell road, whenever the city of New Orleans shall by proper ordinance agree to keep said road in proper repair and said Board shall have the right to enforce said obligation by summary process in the Civil District Court for the Parish of Orleans.

P. M. LAMBREMONT,
President Pro Tem. of the Senate.

J. W. HYAMS,
Speaker of the House of Representatives.
Approved July 11th, 1906.

NEWTON C. BLANCHARD,
Governor of the State of Louisiana.

A true copy:
JOHN T. MICHEL,
Secretary of State.



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United States Supreme Court.

OCTOBER TERM, 1913.

No. 78.

CARONDELET CANAL AND NAVIGATION COM-
PANY, A. J. DAVIDSON, J. H. ELLIOTT AND
HANS WIDMER, LIQUIDATORS THEREOF,

Plaintiff in Error,

versus

THE STATE OF LOUISIANA,

Defendant in Error.

Error to the Supreme Court of the State of Louisiana.

This action was begun by the State of Louisiana in the Civil District Court for the Parish of Orleans for the recovery from the Carondelet Canal and Navigation Company, through its liquidators, of the Carondelet Canal, Bayou St. John and Old Basin, a canal or waterway used by vessels for the transportation of freight and merchandise, and for all the improvements and property connected therewith. For convenience, the Carondelet Canal and Navigation Company, which is plaintiff in error here, will be referred to hereafter as the "Canal Company."

The State averred that it was entitled to possess, control, manage and administer, to the exclusion of all others, the said canal, together with all the property and improvements connected therewith, or in any wise thereto belonging or appertaining; that said canal company was then, and had been for many years last past, in the possession of, and controlled, managed and operated by, the Carondelet Canal and Navigation Company of New Orleans, a corporation created by the General Assembly of the State of Louisiana by Act No. 160 of 1857, and by that act domiciled in the Parish of Orleans.

It alleged that, by the terms of said act, said corporation was given an existence of twenty-five years from and after the 17th of October, 1857; that it was provided therein that, in the event the State of Louisiana should determine, at the expiration of said twenty-five years, not to take possession of said canal, said Carondelet Canal and Navigation Company should have the right to a further existence of twenty-five years from and after the expiration of said first-named period of twenty-five years, making a period of fifty years as the period of the corporate life of said Carondelet Canal Company, at the expiration of which last named period, and as a consideration for which grant, all of said property and improvements connected therewith were to be surrendered to the State of Louisiana, without any compensation to be paid said canal company by the State of Louisiana.

That in 1906, prior to the expiration of said canal company's corporate fifty-year charter, and in order that the State of Louisiana might be in a position to assume and take the control, management and administration of the said Carondelet Canal, Bayou St. John and Old Basin, together with all the property and improvements connected

therewith, or in any wise appertaining, at the expiration of said term of fifty years, the General Assembly of the State of Louisiana, at its session in 1906, by Act No. 161 of said year, provided for the appointment, by the Governor of the State of Louisiana, of a board of five members, who were to be given, by the act, the control, management and administration of the said canal when turned over by said canal company to the State, and that, pursuant to the provisions of said act, the Governor of Louisiana had appointed said members, who were ready to assume possession and control of said canal in the State's behalf.

The State further averred that, notwithstanding the fact that the period during which said canal company had the right to control and possess said property, as aforesaid, had actually expired, the said canal company, through its liquidators, illegally continued to hold, control, manage and operate the same without legal right so to do, and illegally refused to surrender the same to the State of Louisiana, to be administered by the members of the board appointed by the Governor, as aforesaid, under the act of 1906, although amicable demand in writing had been made on said company, through its liquidators, for its delivery to the State of Louisiana.

That said canal company, represented by its liquidators, refused to comply with its said demand, basing its refusal on the ground that the State of Louisiana had not complied with certain alleged contract obligations with it, which it was claimed the State had contracted towards it in and by Section 4 of Act No. 74 of the Acts of the General Assembly of the State of Louisiana for the year 1858, passed one year after the grant of the canal company's original charter, and which subsequent act the canal company contended gave it greater rights in and to said property, and

that until said obligations were lived up to and complied with by the State of Louisiana the said liquidators would continue to refuse to deliver said property and improvements to the State of Louisiana.

The State alleged that there was nothing in said last named act (Act 74 of 1858) which imposed any legal obligation upon it to pay for the property and improvements, or for anything connected with or belonging or appertaining to said canal on the State's taking possession thereof at the end of fifty years, but that, if there were any such conditions in said subsequent act, the same are utterly unconstitutional, null and void, and of no effect, being violative of the Constitution of 1852, and especially of Articles 108 and 109 thereof, which prohibited the granting of aid by the State to companies and corporations formed for the purpose of making works of internal improvements, except in the manner specially set forth therein, and that any payment by the State of Louisiana to said canal company, at the expiration of its charter of fifty years, would be in aid of such corporation, and, therefore, prohibited by said Constitution of 1852; and that, further, the carrying out of the provisions of **Section 4 of said subsequent act of 1858**, as interpreted by the canal company, would be, in effect, a giving by the State to a private corporation of property belonging to the State, in violation of public right and public policy, and entirely beyond the power of the Legislature.

That, even if said Section 4 of the act of 1858 were constitutional, which was denied, there was no obligation on the part of the State to pay the canal company for any property, the possession, control and management of which had been refused to the State by said canal company. That, further, even if said canal company had the legal right to make a claim against the State of Louisiana for the whole,

or any part, of said property, or the improvements connected therewith, which was denied, it had no legal right to refuse to deliver to the State of Louisiana the possession and control of the said Carondelet Canal, the Bayou St. John and Old Basin, from the Old Basin, on Toulouse Street, to Lake Pontchartrain, as the State, being then the sole owner of said property, was entitled to take possession and control thereof, regardless of any claim for compensation which said Carondelet Canal and Navigation Company might make or have in respect to said property and improvements connected therewith.

The petition then refers to a certain triangular strip of ground, expropriated by the New Orleans Terminal Company for railroad terminals, upon which stood the office of the canal company, and for which the Terminal Company was condemned to pay \$3,000. This strip being claimed both by the State of Louisiana and the canal company, the said sum was deposited, and is now on deposit, in the Hibernia Bank and Trust Company of New Orleans, to be paid to the party who should be found by the Court entitled thereto.

The State further averred that said canal company, through its liquidators, since the expiration of its charter, had been, and was then, collecting tolls from vessels entering the said canal, in violation of the rights of the State of Louisiana and of the members of the Board of Control appointed by the Governor.

It prayed for an accounting from said canal company, through its liquidators, from and after October 17, 1907, the date of the expiration of the canal company's charter under the act of 1857, and further prayed for judgment in its favor, and against the said canal company, through its liquidators, decreeing that the said Carondelet Canal,

Bayou St. John and Old Basin, together with all the property and improvements connected therewith or thereto appertaining or belonging, including the said sum of \$3,000 paid for said triangular strip of ground by the Terminal company, be delivered into the possession and control of the State of Louisiana, to be managed and administered by it, for the use of the public, through the Board of Control for the Bayou St. John, Carondelet Canal and Old Basin, appointed by the Governor pursuant to the provisions of Act No. 161 of 1906, free from any obligation on the part of the State to pay or compensate said Carondelet Canal Company or its liquidators for the same, or any part thereof, and that said Act 74 of 1858, and especially Section 4 thereof, the basis of the canal company's claim for compensation for same, in so far as same may be regarded as imposing any such obligation upon the State to pay or compensate said canal company for such property and improvements, be declared unconstitutional, null and void, for the reasons set out heretofore; but that, in the event the Court should hold there was any obligation on the part of the State to make compensation to said canal company for said property and improvements, or for any part thereof, nevertheless, judgment be rendered in favor of the State of Louisiana, and against the canal company, putting the State in immediate possession of said Carondelet Canal, Bayou St. John and Old Basin, without awaiting a final determination of the question of liability on the part of the State of Louisiana to said canal company, and the settlement and adjustment thereof, should the Court hold that there was any such obligation resting on the State.

To this petition the defendant canal company, through its liquidators, excepted on various grounds, which exceptions, having been overruled, it answered, with reservation

thereof, denying all and singular the allegations therein contained, except those specially admitted, and in the course of its answer set up certain alleged Federal questions.

It denied that the State owned and was entitled to possess, control, manage and administer, for the use of the public, all that certain property or area known as the Carondelet Canal, Bayou St. John and Old Basin, together with the property and improvements connected therewith or in any wise thereto belonging or appertaining.

It denied that the State ever owned said property or ever had the right to control and manage same; it averred that the State had no interest in the property, except under and by virtue of the contract made between the State and the Carondelet Canal and Navigation Company, as evidenced by Act No. 160 of 1857 and Act No. 74 of 1858 of the Legislature of Louisiana, and in support of same set out in detail the history of said property, with the decisions of the Supreme Court of Louisiana interpreting certain acts of the Legislature of Louisiana concerning said canal prior to the present canal company's grant of a fifty-year existence, as also the expenditures made on said canal.

Reference is then made, in the answer of the canal company (and there was offered in evidence in its behalf), to Chapter I of the acts of the Legislative Council of the Territory of Orleans, approved July 3, 1805, incorporating the Orleans Navigation Company, hereafter referred to in the opinion of the Supreme Court, and certain other acts of Congress making grants of certain land to said Orleans Navigation Company, as also an appropriation made by Congress for the purpose of extending the said canal to the Mississippi River, which money was never turned over, however, by the President of the United States because the work of extension was never undertaken, the evident purpose of

which reference and offer was, although having no earthly bearing on the case so far as we can see, except as a matter of history, to attempt thereby to give color to the claim of the canal company of a Federal question by reason of a title to an infinitesimal portion of land connected with said basin emanating from the United States Government by congressional grants, the validity of which grants, however, was not disputed by the State, nor drawn in question by the pleading, nor passed upon or alluded to by the Supreme Court of Louisiana in the opinion and judgment rendered in this case, nor necessary to be passed upon.

After reciting the history of the Carondelet Canal, the acts of incorporation of defendant's predecessors, the answer seeks to raise a Federal question also by averring:

"This defendant avers that the statutes of 1857 and 1858 constitute a contract between the State of Louisiana and the Carondelet Canal and Navigation Company protected from impairment by the Constitution of the United States, and that the State of Louisiana neither by suit nor otherwise can in any manner impair the obligation of said contract or take the property of this defendant in the said canal, basin and in the Bayou St. John without making to this defendant the compensation agreed to be made in said contracts.

* * * * *

"Further answering, defendant avers that, in accordance with the provisions of its charter, by a meeting of its stockholders regularly called on March 10, 1908, the date of the expiration of its charter under the act of 1858, defendants herein were appointed liquidators of the said company, and the said stockholders named and appointed Philip Werlein as their commissioner under the act of 1858.

That thereafter due notice of the appointment of this commissioner was conveyed to the Governor of the State of Louisiana, and the Governor was asked to appoint the commissioner on behalf of the State and to join the liquidators in an application to the Civil District Court for the appointment of the third commissioner, all of which applications and notices the Governor of the State of Louisiana ignored and made no answer thereto.

"Further answering, defendant avers that, if Act 161 of the Acts of 1906, entitled 'To provide for the appointment of a Board of Control to assume the management of Bayou St. John and the Carondelet Canal, and to provide for their powers and duties,' can be construed as an act authorizing the said Board of Control to take possession of the property of the Carondelet Canal and Navigation Company without making the compensation provided for in the act of 1858, then that the said Act No. 161 is in violation of that clause of the Constitution of the United States which prohibits the State from impairing the obligation of a contract, and also in violation of the Fourteenth Amendment to the Constitution of the United States as a taking of defendant's property without due process of law.

"Further answering, respondent says that, under the provisions of Article 105 of the Constitution of 1852, which was in force at the time the acts of 1857 and 1858 were passed, it was provided that no vested rights should be divested unless for purposes of public utility, and after adequate compensation previously made."

The answer avers that said act must be interpreted with reference to said article of the Constitution, as well as with Article 166 of the Constitution of 1898, and that the right of the State "to take a reversion of the property of

the Carondelet Canal and Navigation Company was subject to its obligation to make previous compensation before such taking could be had"; that in no event could the State be authorized to divest the vested rights of this defendant or to take its property for a public purpose without previous compensation therefor, and that such taking of defendant's property, without previous compensation therefor, would not only be a violation of said articles of the Constitution of the State of Louisiana, but also violative of the Fourteenth Amendment to the Constitution of the United States, as such taking without previous compensation would be a depriving this defendant of its property without due process of law.

And then follows allegations that the State "never spent a dollar upon the Carondelet Canal, the Basin or the Bayou St. John"; averments showing what the canal company expended on this canal (but not what it received in tolls during the past fifty years), and that the State of Louisiana, "by no devise whatever, either by the act of its Legislature, or by the act of its Attorney General, or by the act of its Courts, can deprive this defendant of its rights"; that defendant has complied with every obligation of its charter, etc., followed by this statement:

"And, further answering, defendant avers that it has always been ready and willing to comply with the provisions of the charter of 1857, as amended by the charter of 1858, and is now ready and willing to deliver the Canal Carondelet, and the Basin, and the Bayou St. John to the State of Louisiana upon the payment to it of the value of said property as fixed by an award of three commissioners, one appointed by the company, one by the Governor, and one by the Civil District Court for the Parish of Or-

leans, and that until this award is made, and the amount thereof paid, it has the right to hold and enjoy the said property."

This alleged right of the defendant to keep the property called for by the State until paid compensation therefor, according to its contention, was based upon Section 4 of the Act 74 of 1858, which the canal company contended gave it greater rights than the act of 1857; that is, it was insisted by the canal company that, by said subsequent act of 1858, it should receive, at the end of its fifty-year franchise, compensation for its alleged property according to an award to be made by three commissioners; whereas, by the act of 1857, the canal company was not to be paid any compensation at the end of said period.

The entire case in the court below depended upon the proper interpretation to be given to the acts of 1857 and 1858, particularly Section 4 of the latter act.

There was judgment in the District Court decreeing and holding that the three commissioners provided for by Section 4 of Act 74 of 1858 must be appointed before further proceedings can be had in this case. The action of the State of Louisiana was, therefore, dismissed as premature, without prejudice to the rights of either party to question the report and award of the said commissioners by any process when the same shall have been made.

The State of Louisiana appealed from said judgment to the Supreme Court of the State of Louisiana, which Court reversed the judgment appealed from and rendered judgment in favor of the State of Louisiana, and against the canal company, decreeing that the Carondelet Canal, Bayou St. John and Old Basin, together with all the property and improvements connected therewith, or thereto appertaining

or belonging, should be delivered to and into the possession and control of the State, to be managed and administered by it, for the use of the public, through the Board of Control appointed by the Governor pursuant to the provisions of Act No. 161 of 1906, free from any obligation on the part of the State to pay or compensate the said defendant therefor, or for any part thereof; ordering the liquidators to render an accounting, showing their receipts and disbursements in the management of the said property since **March 10, 1908**, and that the case be remanded to the District Court for further investigation, upon the lines indicated by the opinion, unto the question of the ownership of the \$3,000 now on deposit in the Hibernia Bank and Trust Company; and that the right of plaintiff to obtain judgment for such amount as may be found due upon defendant's accounting, and to take such further proceedings and obtain such further orders as may be required for the execution of this judgment, be reserved, defendant to pay all costs.

A rehearing was applied for by the canal company, which was granted, and on the rehearing, without handing down any further opinion or reasons for its decision, the Court, *per curiam*, entered the following judgment and decree:

"It is ordered that the decree heretofore handed down in this cause be recast and made the final decree of the Court, as follows—to wit:

"It is, therefore, ordered that the judgment appealed from be annulled, avoided and reversed, and that there now be judgment in favor of the plaintiff, the State of Louisiana, and against the defendant, the Carondelet Canal and Navigation Company, in liquidation, herein represented by A. J. Davidson, J. H. Elliott and Hans Widmer, its liquidators, ordering the delivery by said liquidators to the State

of Louisiana of the waterway known as the Carondelet Canal and Bayou St. John and Old Basin, in its entirety, as it stood on March 10, 1908, together with all the property and improvements appurtenant thereto, including the roadway or roadways upon the side or sides of said waterway.

"It is further ordered that whatever claims the State or the defendant may have to the triangular strip of ground described in the petition, or to the proceeds thereof, or to any other property, movable or immovable, not appurtenant to said waterway and roadways, are hereby reserved for further adjudication in this proceeding, with leave to the parties to amend their pleadings.

"It is further ordered that said defendant and said liquidators render an accounting, showing their receipts and disbursements in the management of said property **since March 10, 1908.**

"It is further ordered that this cause be remanded to the District Court for further proceedings on all questions reserved as above stated, and that the right of the plaintiff to obtain judgment for such an amount as may be found due upon defendant's accounting, and to take such further proceedings and obtain such further orders as may be required for the execution of this judgment, be reserved.

"It is further ordered that the defendant pay all costs."

See 119 La. 279.

From this judgment the canal company has prosecuted a writ of error to the Supreme Court of the State of Louisiana.

The judgment above quoted shows that this is not a final judgment, and that the case is, therefore, not reviewable by this Court.

In *Hasteline vs. Central Bank of Springfield*, 183 U. S. 131, which is a case similar to the one now before it, this Court said:

"The motion to dismiss must be granted. We have frequently held that a judgment reversing that of the Court below, and remanding the case for further proceedings, is not one to which a writ of error will lie. The case of *Mower vs. Fletcher*, 114 U. S. 127, is not in point, as the judgment of the Supreme Court of the State remanded that case to the inferior Court with an order to enter a specified judgment, nothing being left to the judicial discretion of the Court below. * * *

"While the judgment may dispose of the case as presented, it is impossible to anticipate its ultimate disposition. It may be voluntarily discontinued, or it may happen that the defeated party may amend his pleadings by supplying some discovered defect, and go to trial upon new evidence. To determine whether, in a particular case, this may or may not be done might involve an examination, not only of the record, but even of the evidence in the court of original jurisdiction, and lead to inquiries with regard to the actual final disposition of the case by the Supreme Court which it might be difficult to answer. We have, therefore, always made the face of the judgment the test of its finality, and refused to inquire whether, in case of a new trial, the defeated party would stand in a position to make a better case."

This case is cited with approval in *Schlosser vs. Hemphill*, 198 U. S. 175, where the Court says:

"By its judgment, the Supreme Court of Iowa reversed the decree of the trial Court and remanded the cause 'for further proceedings in harmony with the opinion of this Court.'

"We have heretofore held that a judgment couched in such terms is not final in such a sense as to sustain a writ of error from this Court. (*Hasteline vs. Bank*, 183 U. S. 130.) It was there ruled that the face of the judgment is the test of its finality, and that this Court cannot be called on to inquire whether, when a cause is sent back, the defeated party might or might not make a better case."

And in *Missouri and Kansas Railway Company vs. City of Olathe*, 222 U. S. 185, the doctrine announced in the foregoing cases is embraced in the syllabus to the case, as follows:

"Unless it appears from the record that the judgment sought to be reviewed finally determines the cause, this Court is without jurisdiction.

"Where the judgment sought to be reviewed affirms the judgment below, but merely sustains the demurrer without dismissing the suit, so that the cause is left standing in the lower court for further proceedings, it is not a final judgment reviewable by this Court."

See, also, *Norfolk Turnpike Co. vs. Virginia*, 225 U. S. 264, and *Louisiana Navigation Co. vs. Oyster Commission*, 226 U. S. 99, in which latter case this Court held (syllabus):

"This Court cannot be called upon to review the action of the State Court by piecemeal; and, even if the judgment does finally dispose of some elements of the controversy, unless it is final on its face as to the entire controversy, this Court will not review it.

"On the question of finality, the form of the judgment is controlling, and that form cannot be disregarded in order to ascertain whether the judgment is a final one according to State law."

When it is shown that the Court remanded the case and reserved, for further adjudication in this proceeding, the question of the ownership of the triangular strip of ground, the proceeds of which were claimed by the State and the canal company, as also the question of whether there was any other property, movable or immovable, not appurtenant to said waterway and roadways, which the State or the canal company might claim, "with leave to the parties to amend their pleadings," and ordering an accounting since March 10, 1908, as also reserved the right of the State "to obtain judgment for such an amount as may be found due upon defendant's accounting," etc., all of which must be threshed out in the lower court, it is seen that this is not a final judgment; and, upon the authorities hereinbefore cited, the case must be dismissed.

It is also apparent from the record that this case should likewise be dismissed for want of jurisdiction in this Court, either because:

(a) No substantial Federal question of impairment of contractual obligations by subsequent legislation is presented for consideration to this Court by the issues; or

(b) If presented, that same was not passed upon by the Court or necessary to the conclusion reached and judgment rendered (*De Saussure vs. Gailliard*, 127 U. S. 222; *Deming vs. Packing Co.*, 226 U. S. 102); or

(c) The decision of the Court below, even if held to have passed thereon, rested upon an absolutely independent ground—*i. e.*, the construction of its own statutes, not involving a Federal question, and sufficiently broad in itself to support the judgment.

Consolidated Turnp. Co. vs. Norfolk, 228 U. S. 599; *Beaupre vs. Noyes*, 138 U. S. 397; *Preston vs. Chicago*, 226 U. S. 447; *Wood vs. Chesborough*, 228 U. S. 672.

The State of Louisiana, defendant in error, because of the amount involved, and the importance to the public of a speedy determination of the questions at issue, is anxious to have this Honorable Court pass upon its entire want of jurisdiction in the premises, not only because of the non-finality of the judgment, but because of its want of jurisdiction for the other reasons stated above, so as to put an end, if possible, to any further lodging of this case, by writ of error, in this court, after the case is remanded and the issues tried below on the questions contained in the remand of the Supreme Court of Louisiana.

In other words, as the record here presents two grounds for dismissal, based upon this Court's want of jurisdiction—one on the ground of the non-finality of the judgment, the other because no issues giving this Court jurisdiction are involved or presented—we can see no reason why this Court cannot pass upon all of the grounds urged on the question of jurisdiction at this time, and not confine itself, in its examination of this record, solely to the question of the non-finality of the judgment, and particularly so where the facts show a frivolous Federal question raised. In other words, should the Court decline to take jurisdiction at this time, simply because of its want of jurisdiction by reason of the non-finality of the judgment, and refuse to pass upon its want of jurisdiction for the other reasons specified hereinabove, especially because no subsequent law of the State is shown by the canal company to have impaired the obligation of its contract, the result of this ruling would be the dismissal of this case on that ground alone, with the probability that this case will ultimately be brought back to this Court only to pass upon its want of jurisdiction for the other reasons urged above, which this Court (as it involves a question of jurisdiction)

can just as well pass upon at this time with the present record before it.

Hence, in the interest of the general public, who feel a deep interest in this case, and to the end that there may be an end to litigation, it is earnestly hoped that this Court will pass upon its entire want of jurisdiction herein.

In the case of *Louisiana Nav. Co. vs. Oyster Commission, supra*, where the grounds of the motion were, as we understand it, based on the non-finality of the judgment and for want of jurisdiction because of the matters passed on in the court below, this Court only passed on that feature of the case involving the non-finality of the judgment; but its reasons for so doing may be found in the fact that your Honors held that "the dismissal of the writ of error for want of jurisdiction is on the presumption that the case otherwise involves Federal questions reviewable by this Court," a presumption which we contend an examination of the record in this case will not warrant.

This case should never have been brought here, for, as we shall show, no Federal question is presented. The fallacy of plaintiff in error's contention lies in its failure, as we contend, to differentiate between a subsequent act of the Legislature, which it alleges impaired the obligation of its contract, and a decision of court which counsel assert misconstrued its contract.

Turning now to the matters at issue, in order to show what was involved and decided, we desire to call to the attention of the Court the acts of 1857 and 1858 in dispute, as well as the other acts referred to by the Court, which will be found in an appendix to this brief, from which it will be seen that the decision of this case turned altogether upon the proper construction of Section 4 of Act 74 of 1853 and Section 20 of Act 160 of 1857.

Section 4 of Act 74 of 1858 reads:

"That the said company shall enjoy corporate succession during fifty years from this date [March 10, 1858]; after which time *it* may revert to the State, upon due compensation being made according to award by three commissioners, one appointed by the Governor of the State, one by the company, and the third by any court of record of New Orleans." (Italics ours.)

Section 20 of the act of 1857, which is the act that gave the canal company birth, and which was held by the Supreme Court not to have been repealed by the act of 1858, reads:

"Be it further enacted, etc., That this corporation shall have existence for and during the term of twenty-five years from and after the 17th day of October next; provided that the State of Louisiana shall have the right to take possession of said Canal Carondelet and Bayou St. John, and all the property and improvements connected therewith, at the expiration of the term above mentioned, should the Legislature determine so to do, upon paying to this corporation the value of said property, to be appraised by five competent persons, as experts, two to be appointed by this corporation and two by the Governor, and the four thus appointed shall appoint a fifth; said experts shall be required to take an oath to discharge their duty faithfully. In the event that the State shall not determine to take possession of said property, as herein provided, then this corporation shall be in existence for twenty-five years from and after the expiration of the term in this section mentioned aforesaid, and at the end of such second term of twenty-five years the said property may still

become absolutely the property of the State of Louisiana, and no compensation required to be made to this corporation."

These two acts, and particularly the aforesaid sections thereof, were, by the petition and answer filed in the State court, put up to the Court for interpretation by both plaintiff and defendant, and were the only matters at issue, and the Supreme Court of Louisiana held that the construction put upon the act by the State, that the canal company was not entitled to compensation for the canal and improvements connected therewith at the end of its fifty-year charter, was the true and correct one, except the said Court held that, instead of the State being entitled to take possession of the canal and property connected therewith fifty years from and after October 17, 1857, the date set for same in Section 20 of the act of 1857, and as prayed for in the petition filed by the State, it held the State was only entitled to an accounting and entitled to take possession of the canal and the property connected therewith fifty years from and after the date specified in Section 4 of Act 74 of 1858, that being the date of the approval of the amended charter of the canal company, passed by the Legislature of said year, or March 10, 1908; and that Section 4 of the act of 1858, in referring to compensation to be made by the State, had reference to a railroad which was never built by the canal company.

And for the purpose of showing most conclusively that the construction of these two acts—1857 and 1858—were the only matters at issue which the Supreme Court of Louisiana was called upon to pass, and that no subsequent legislation was really involved, we have but to refer to page

33 of the brief filed by the counsel for the plaintiff in error in the said court, in which they say:

"As stated above, the sole issues in the case are:

"FIRST. Compensation *vel non*.

"SECOND. If compensation is due, must it be previously made before taking?"

Concerning these two sections, above quoted, from the acts of 1857 and 1858, and the interpretation which the canal company insisted should be placed thereon, the Supreme Court of Louisiana said:

"Counsel for defendant say in their brief:

"The clear meaning of this act [referring to Act No. 74 of 1858] is that the State gives the corporation a free and absolute grant of corporate life, without condition or price, and reserves the right to take its property, at the end of fifty years, upon making due compensation, to be determined as provided.'"

The Court, answering this contention of plaintiff in error, said:

"We do not, however, find the clear meaning thus referred to, and, if it were clear from the act of 1858 that the State has obligated itself to compensate the defendant for any of its property that may be taken, the act of 1857 is also to be reckoned with, and between the two the question remains: What does the property of the defendant, for which it is entitled to compensation, consist of; and does the obligation of the State to make compensation therefor preclude it from, in the meanwhile, recovering any property of its own that may be in defendant's possession?"

"The act of 1858 purports to be a piece of independent legislation, telling its own story, without affecting, or being affected by, any pre-existing law; and Section 4, on which defendant relies, and which we reproduce for convenience, reads:

"That the said company shall enjoy corporate succession during fifty years from this date; after which time it may revert to the State, upon due compensation being made, according to award by three commissioners, one appointed by the Governor of the State, one by the company, and the third by any court of record of New Orleans.'

"The only antecedent for the relative pronoun 'it,' as used in the section quoted, is 'the said company,' but, as it (the said company) cannot 'revert' to the State in any practical way, we disregard all rules, except that which requires a Court to endeavor to give effect to the real meaning of the lawmaker, and, seeking an antecedent elsewhere, naturally prosecute the search within the limits of the act of 1858, before going further. Section 3 provides that the City of New Orleans shall be prohibited, after five years, from draining into the Bayou St. John; that it shall indemnify the company, if it does so; and that it may build bridges over the bayou within five squares of each other. There is nothing there that could 'revert to the State.' Section 2 provides that:

"The company shall have the right to construct a railroad, with single or double track, on either side of their basin, canal and the Bayou St. John, from the head of said basin, on Toulouse Street, to the lake end, with the privilege of passing through such private property and lands as may be needed, upon due compensation made to the owners thereof, in conformity with existing laws; and they shall be authorized to transport, on said road, freight and passengers, for hire.'

"And there is a further provision concerning the use of steam within the city, and the subjection of the road to general police regulations. Looking back a little, we find that in 1840 the Orleans Navigation Company had started to build such a railroad as is thus provided for; that is to say, a road which was to extend from the corner of Toulouse and Franklin streets to the lake, and that it was prohibited from so doing by an injunction sued out by the Pontchartrain Railroad Company, on the ground that, under the charter of that company, which had still fifteen years of life (expiring in 1885), it had the exclusive privilege of operating railroads to the lake. (*Pontchartrain R. Co. vs. Orleans Nav. Co.*, 15 La. 404.) It would appear, then, that the charter, and, presumably, the exclusive privilege, of the Pontchartrain company having expired, the Carondelet company, in 1858, concluded that it would be well to revive the abandoned enterprise of its predecessor, and it can very well be understood that it would desire to provide against the reversion to the State of the railroad, along with such property and improvements as might be included in the reversion clause of the act of 1857. In that connection the following considerations appear to us worthy of some attention. Under its charter and contract, the company was bound to make all the improvements upon the canal and bayou that were called for by 'the report and plans known as Harrison's report and plans,' except that, by the act of 1857, it was relieved of the obligation to build a basin at the junction of the canal and the bayou, and to build a breakwater off the mouth of the bayou, in the lake. (Act No. 309 of 1852, Sec. 4; Act No. 160 of 1857, Sec. 3.) As 'Harrison's report and plans' have not been produced, we have no means of knowing what they required, but, judging by the two improvements of which the company was thus relieved (under the act of 1857) and

from the fact that the New Orleans Canal and Navigation Company had broken down in an attempt to carry them out, we should imagine that they were quite elaborate and called for a heavy expenditure of money; and the company (now in liquidation) was probably of the same opinion, since the act of 1858, admittedly 'promoted' by it, contains the provision:

"SEC. 5. * * * That the said company shall have exclusive power to follow and carry out their works in conformity with such plan, or plans, as they may, at any time, adopt and deem best calculated to forward the interests of commerce.'

"The company, therefore, instead of being bound to carry out a scheme of improvements, perhaps elaborate and expensive, was given *carte blanche* to improve the canal and bayou, or, at its option, to confine itself to the collection and enjoyment of the revenues of that property; the reference in the statute to the 'interests of commerce' being negligible. Under the circumstances stated, and unless it should be conceded that the company had become the owner of the canal, bayou and basin, the question as to what there would be to 'revert' to the State was left to it to determine, and there need have been little or nothing *belonging to the company* to fall under the reversion clause of the statute. That being the case, the provision in the act of 1858 that 'it may revert,' etc., would have been comparatively valueless to the State, and innocuous to the company, if it had not been for the provision about the railroad, the prospective reversion of which may have been regarded as worthy of the serious consideration of the promoters of the act, the more particularly as the railroad was *to be built*, and roads of that character usually require something better than a prospective reversion in order to induce the subscription

required to bring them from the realms of fancy into the domain of fact.

"Whether this be the true solution of the problem or not, we are unable to find anything else in the act of 1858 than the railroad to which the relative 'it,' as used in Section 4, can in any way be made to relate. It does not relate to the 'lay-outs, basins and half-moons' referred to in Section 1; nor to the 'fines' which the General Assembly, in a spirit of unusual liberality, by Section 7, authorized the company to impose, to be 'recovered before any Judge of competent jurisdiction'; nor does it apply to the bonds which, by Section 8, the company was authorized to issue; nor yet to the exemption from taxation conferred by Section 9. As, however, the act of 1858 contains no repealing clause, and the act of 1857 is in *pari materia*, the search for the vagrant antecedent may be prosecuted in the last-mentioned statute. But in that connection it will be as well to bear in mind that we find the meaning, or possible application, of the language that we are endeavoring to interpret ambiguous and doubtful; that the concession is made (though the fact is apparent enough without it) that the instrument, or statute, containing that language was 'promoted,' and, as we believe, prepared, by the defendant; that the language in question is here invoked as importing a donation, release, or gratuity, prejudicial to the State and advantageous to the promoter; and that the rule in such cases is that, where two or more interpretations are possible, that one should be adopted which is most favorable to the party who did not create the ambiguity, or doubt, and as against whom the donation, release, or gratuity, is sought to be enforced, which rule, as it appears to us is particularly applicable in this case for the reason that a private corporation that can obtain the passage of a statute purporting to confer on it the power to impose fines

upon ordinary citizens for violations of its rules, to be collected whenever a Judge of competent jurisdiction is found, must be presumed to have been able to obtain all that it wanted, and is not entitled to get anything by implication or upon a doubtful construction of its grant.

"The act of 1857 (No. 160), as we have stated, imposed upon the defendant corporation (thereby created) the obligation of making improvements to the channel of navigation here in question, according to 'Harrison's report and plans,' save as to one basin and a breakwater (Section 3). It provided that the corporation should exist for twenty-five years (from October 17, 1857), at the expiration of which period the State was to have the right to take possession of the Bayou St. John, and all of the property 'and improvements connected therewith,' upon paying to the corporation 'the value of said property,' according to an appraisement for which provision was made. It further provided that, should the State not elect to take possession of the property, the corporation should continue for another period of twenty-five years, at the expiration of which 'the said property might become, absolutely, the property of the State of Louisiana, and no compensation required to be made to the corporation.'

"The act of 1858, as we have seen, relieved the company of the obligation to improve according to any other plan than such as it might choose to adopt. It then declared:

" 'That the said company shall enjoy corporate succession during fifty years from this date; after which time it may revert to the State, upon due compensation being made,' etc.

"As has already been shown, being relieved of the obligation to make improvements, other than as it saw fit, it is not likely that there would have been anything of value to revert to the State, under the

act of 1858, unless it should be considered that the company owned the bayou, the canal and the basin, for the 'improvement' of which public property the different corporations had been established.

"With regard to that property, it seems to have been fairly demonstrated by the testimony adduced in the cases of *Orleans Navigation Co. vs. Mayor*, 1 Mart. (O. S.) 269; *Id.*, 2 Mart. (O. S.) 10, 214; *State vs. Orleans Nav. Co.*, 11 Mart. (O. S.) 38, by the attitude and admissions of the company and the rulings of the Court in those cases, and in the cases subsequently arising, to which the successors of the Orleans Navigation Company were parties, and by other facts and circumstances disclosed in the record, that, when the Orleans Navigation Company was created, the Bayou St. John had been a navigable stream, actually used as such for the purposes of commerce during a period beyond the memory of man; that it was so used at that time, and has been so used ever since; that the Carondelet Canal was excavated under the direction of the Baron de Carondelet, representing the Spanish Government, mainly at the expense of the citizens of the province, who furnished three-fourths of the required labor (as against one-fourth furnished by the Government), and to whom appeals were made for help in a public work, to be excavated through public land, and which was to connect the City of New Orleans, for the purposes of drainage, and, later, for the purposes of navigation, with the Bayou St. John, thereby establishing a highway of navigation between the city and the lake and between the lake and the Mississippi River.

"The consensus of the testimony given by the witnesses in the case last above mentioned was to the effect as above stated; that is to say, that, though navigation in and out of the bayou was rendered more or less difficult by the existence of a bar which had formed in the lake off the mouth of the bayou,

and by obstructions within the stream there were, and had always been, so far as the witnesses knew, from thirty to fifty vessels constantly engaged in such navigation from points on the north side of the lake, on Mississippi Sound, and from Mobile, Pensacola, Appalachicola, and other ports and places. It was testified that vessels were built and repaired in the bayou, and 'that almost all the planters on the opposite side of the lake each had a schooner, and they had no other means of communicating with New Orleans and disposing with their produce.' The navigation company, as defendant in the suit, through its counsel, admitted and contended that the act creating the company operated no alienation of the stream, or of the use of the stream, and that it was 'still, and had ever been, since the company has had the charge of improving it, a public highway, free for the use of all the citizens of the United States.'

"And the Court, sustaining the contention of the company, as also that of the State, to the effect that the stream was a navigable highway, and, under the Ordinance of 1787, free to all citizens of the territory, and of the United States, held that such freedom was not incompatible with regulations having for their purpose the improvement of the navigation, and imposing a charge upon those who enjoyed the benefit of such improvement; and that, though there had been no alienation of the soil, and though the bayou had not ceased to be a 'public highway,' the regulation and charge were legal and proper.

"Nor, so far as any alienation or attempted alienation of the soil was concerned, could the Court very well have held otherwise, since the only language in the charter of the company which purports to grant anything with reference to the Bayou St. John is that which declares (Section 9) 'that, as soon as the said company shall have *improved* the navi-

gation of Bayou St. John,' it shall be entitled to charge tolls proportioned to the improvement, and that it may construct roads on either side of the bayou, and charge tolls for the use of the same.

"In *State vs. Orleans Navigation Co.*, 7 La. An. 681 (being the suit in which the charter of the company was declared forfeited, and in which the State, present plaintiff, and the company, under which the present defendant is asserting some claims, were the sole litigants), the Court said:

" 'The Bayou St. John was a navigable stream previous to the cession of Louisiana to the United States. The Spanish Governor, the Baron de Carondelet, excavated the basin and canal to connect the navigation of the bayou with the rear of the city. * * * All its [the company's] property, *except its rights upon the basin, canal and Bayou St. John*, has been sold. * * * The evidence in the case satisfied us that the company has not *kept the navigation* of the canal and bayou in the situation required by the charter. * * * *The navigation which, by the improvements* of near half a century, should have all the perfection of which it is susceptible, is obstructed. * * * *In fact, we doubt if the bar, at least, which affects the whole navigation, is in a better situation than in the time of Baron de Carondelet.*' (Our italics.)

"What were the 'rights upon the basin, canal and bayou' which the company had not sold? Clearly, those granted by its charter, *to improve the navigation* and collect tolls, as the improvements were made. What did the Court mean in saying that the company had not 'kept the navigation * * * in the situation required by its charter' if the canal and bayou were not navigable when it took charge for the purpose of improving the navigation? What could have been its meaning, in expressing the doubt whether the bar 'which affects the whole navigation

is in a better situation than in the time of Baron de Carondelet,' save that the bar had always affected the navigation? And what greater bearing had the fact that the bar had always affected the navigation of Bayou St. John on the question of the navigability of that stream than has the fact that the bar off the mouth of the Mississippi affects its navigability upon the question of the navigability of that great highway?"

Continuing, the Court says:

" * * * From the evidence, from the judicial admissions of the defendant and its predecessors, and from the rulings of the courts, in litigations to which defendant and its predecessors were parties, therefore we conclude that the Bayou St. John has always been a navigable stream, and, with the Carondelet Canal and basin, and the property connected therewith, has always been property, the title to which has been held by the Government, for the use of the public. As a navigable stream, the Bayou St. John was inalienable, under the Ordinance of 1787, agreeably to the provision of which Louisiana was admitted into the Union as a State. As public property, created at the expense of the citizens of the province, who bore that expense upon the faith of the representations of the Government that it would be dedicated to their use, the canal was also inalienable, unless we are willing to concede that a government is bound by no consideration of honor or good faith. And if, upon the completion of the canal, the Baron de Carondelet, or the Spanish Government, which he represented, could not honorably or legally have conveyed the canal to a private individual or corporation, to the prejudice of those at whose expense it had been constructed, neither could the Government of the United States, as the successor of the Spanish Government, and neither could the State of

Louisiana, as the successor of the United States, by any right of dominion acquired in that capacity over the navigable streams and public highways within her territory. We do not find, however, that either of the Governments mentioned has made any attempt to alienate the property here in question, or that the defendant has ever acted under the belief that there had been such alienation. It is thought that, in the notarial act of conveyance from Halsey, liquidator, to Currie, there is some language used which has the appearance of an attempt of that kind; but Halsey could not convey more than he had, and the grantee of Currie, the New Orleans Canal and Navigation Company and its grantee, the present defendant, seem to have been aware of that principle, since the present defendant acquired only the interest of its grantor in the property. The legislative acts of 1852 and 1858, relied on by defendant, assume as a fact (that which no one, we think, could reasonably deny) that the bayou, the canal, the basin, and all that constituted what may be called the thing, the plant, the highway of commerce, known as the 'Bayou St. John and Carondelet Canal,' was property held by the State, for the use of the public, just as the streets and thoroughfares of the City of New Orleans were held, and the reference in those acts to 'property and improvements' which were to revert to the State related, and could relate, as to the title, only to such property and improvements as the different corporations were expected to add to that which, the title being already vested in the State, for the use of the public, could not revert to the State.

"These being our conclusions with reference to the status of the Bayou St. John and the Canal Carondelet, we can find nothing in the act of 1857 to which the word 'it,' as used in the act of 1858, could reasonably, or otherwise, be held to relate, and we are obliged to fall back upon the solution that it was in-

tended to relate to the railroad provided for in the preceding section of the same act, and which, having never been built, can afford no basis for defendant's demand for compensation and for a continuance of its possession of public property."

Enough has been quoted above from the opinion of the Supreme Court of Louisiana and brief of counsel to show that the entire disposition of the claim of the canal company went off upon the true construction to be given, by the Court, to the statutes of that State, without in any manner finding it necessary to refer to, pass upon or decide the Federal question sought to be raised by the plaintiff in error in its answer, and we submit that a reference to what was decided by the Supreme Court ought to result in the dismissal of this writ of error for want of jurisdiction.

The canal company was chartered by the Act of 1857, which gave it its corporate life. It was therein granted certain rights for a period of twenty-five years, the act providing that, at the expiration of said period, the State would be given the right to take possession of said canal, and all the property and improvements connected therewith, upon paying the canal company the value of said property, to be estimated by appraisers, and it is distinctly provided that, in the event the State should conclude not to take the property at the end of said period of twenty-five years, the canal company was automatically to have an existence of an additional twenty-five years, at the end of which second period the State was to become the owner of said property, "and no compensation required to be made" to said canal company.

Here, then, was a distinct grant of corporate life, in which the State had the option either of taking the prop-

erty at the end of twenty-five years and paying said canal company compensation according to appraisement by five persons, or of refusing to take possession, in which latter event the canal company was to have an additional extension of twenty-five years, after which period the State was given by the said Act of 1857, the right to take the property without compensation.

Although the canal company paid the State absolutely nothing in consideration of said valuable grant, the contention of the canal company is that, by a subsequent act of the Legislature of 1858—Act No. 74 of that year—the canal company was given **greater charter rights** than by the act of 1857. That is to say, the claim was advanced that, whereas, by the act of 1857, the State was given the right to take over the canal and all property connected therewith at the end of fifty years, without compensation, the subsequent act of 1858 made it the obligation of the State to pay the canal company at the end of that period the value of said canal and other property, according to an award to be made by three commissioners, to be appointed as provided by Section 4 of said act, one of whom was to be appointed by "any court of record of New Orleans"; in other words, that the State made the canal company a present of the canal, if we understand its answer correctly.

Thus the Court will readily see that, so far as the subsequent act of the Legislature of 1858 is concerned, the canal company cannot very well advance the argument before this Court that said subsequent act **impaired** the obligations of its contract. On the contrary, it based its entire defense, in the courts below, on the ground that this subsequent act **gave it greater rights** in and to the canal than the act of 1857. As stated above, the Supreme Court of Louisiana,

construing and interpreting the said statute, and particularly Section 4 thereof with respect to the canal company's rights after the expiration of its fifty-year charter, held that the meaning and intention of the said subsequent act, and particularly Section 4 thereof, was not to make the State of Louisiana pay for the canal and all the property connected therewith at the end of fifty years, as contended by the canal company, but that it was thereby intended that the canal company was to be compensated, at the end of fifty years, only "for a railroad which, by Section 2 of the charter, the company was authorized to build," and which the Court found had never been constructed. The Court held, therefore, that, "as no such road was built, the State is entitled, under the terms of that act, construed with Act 309 of 1857 (1852), to be restored to the possession of the property, without making compensation" to the canal company, and that there was no necessity for an award to be made by three commissioners, as there was nothing to be appraised.

Nevertheless, as stated above, the Court held that the fifty-year period began fifty years from and after March 10, 1858, the date of the approval of said act, and not fifty years from and after the approval of the act of 1857.

Therefore, so far as the act of 1858 is concerned, whether the Supreme Court correctly or erroneously interpreted the meaning of the said act (although we insist the Court has placed a correct interpretation thereon), there can be no question of impairment of the obligation of the canal company's contract thereby, or any other Federal question presented by that decision, and, if plaintiff in error wishes to succeed in raising a Federal question, it must look elsewhere to do so.

As said in *Fisher vs. New Orleans*, 218 U. S. 439:

"The Court did not purport to rely upon the Constitution of 1898 or any subsequent legislation for the result. It did not purport to enforce any later law; it simply denied the existence of the right alleged. Therefore, on the face of the decision, there is no warrant for coming here."

This is exactly what happened in this case. The Court simply denied the existence of any right in the canal company to claim compensation for the said canal, and this without the necessity of construing or passing upon the act of 1906 or relying upon any other statute of the State, subsequent to the granting of the canal company's charter, in reaching its conclusion.

But, as above stated, whether the Court was right or wrong in the conclusion reached, and judgment rendered, presents no Federal question of impairment of the obligation of the contract of plaintiff in error, unless the Court finds some subsequent act—that is to say legislation—having that tendency, otherwise this Court would be made a haven for appeals whenever a party felt that the Court below had taken a different view of the contract than that entertained by him.

As held in *Central Land Company vs. Laidley*, 159 U. S. 110, in which the Court quoted the following approvingly from *Lehigh Water Co. vs. Easton*, 121 U. S. 388, 392:

"The State Court may erroneously determine questions arising under a contract which constitutes the basis of the suit before it; it may hold a contract void which, in our opinion, is valid; it may adjudge a contract to be valid which, in our opinion, is void; or its interpretation of the contract may, in our

opinion, be radically wrong; but, in neither of such cases, would the judgment be reviewable by this Court under the clause of the Constitution protecting the obligations of contracts against impairment by State legislation, and under the existing statutes defining and regulating its jurisdiction, unless that judgment, in terms or by its necessary operation, gives effect to some provision of the State Constitution, or some legislative enactment of the State, which is claimed by the unsuccessful party to impair the obligation of the particular contract in question."

And, as said in *Ross vs. Oregon*, 227 U. S. 150, quoting approvingly *Commercial Bank vs. Buckingham's Executors*, 5 How. 317, which reasoning applies to this case:

"If this Court was to assume jurisdiction of this case, it is evident that the question submitted for our decision would be, not whether the statutes of Ohio are repugnant to the Constitution of the United States, but whether the Supreme Court of Ohio has erred in its construction of them. It is the peculiar province and privilege of the State Courts to construe their own statutes; and it is no part of the functions of this Court to review their decisions, or assume jurisdiction over them on the pretense that their judgments have impaired the obligation of contracts. The power delegated to us is for the restraint of unconstitutional legislation by the State, and not for the correction of alleged errors committed by their judiciary."

Continuing, the Court says:

"A like question was presented and similarly disposed of in *New Orleans Waterworks Co. vs. American Sugar Ref. Co.*, 125 U. S. 18, 30, where it was said:

"In order to come within the provision of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired, but it must have been impaired by the law of a State. The prohibition is aimed at the legislative power of the State, and not at the decisions of its courts, or the acts of administrative or executive boards or officers, or the doings of corporations or individuals.' (*Bacon vs. Texas*, 163 U. S. 207.)"

See, also, the following cases:

Y. & M. V. R. R. vs. Adams, 180 U. S. 41:

"If the sole question be whether the Supreme Court has properly interpreted the contract, and there is no question of subsequent legislative impairment, there is no Federal question to be answered."

Knox vs. Exchange Bank, 12 Wall. 379, 383:

"We are not authorized by the judiciary act to review the judgments of the State Courts because their judgments refuse to give effect to valid contracts, or because those judgments, in their effect, impair the obligations of contracts. If we did, every case decided in a State Court could be brought here, where the party setting up a contract, alleged that the Court had taken a different view of its obligation to that which he held."

Turner vs. Wilkes County Commissioners, 173 U. S. 461, holding:

"This being a writ of error to a State Court, we cannot take jurisdiction under the allegations that a contract has been impaired by a decision of that

Court, when it appears that the State Court has done nothing more than construe its own Constitution and statutes existing at the time when the bonds were issued, there being no subsequent legislation touching the subject."

In *Commercial Bank vs. Buckingham's Executors*, 5 How. 342, the facts show that the Commercial Bank of Cincinnati was incorporated by an act of the Legislature of Ohio, of date February 11, 1829, which provided that, in case the bank should at any time suspend payment and refuse or delay to pay in gold or silver any note or bill on demand, it should be "liable to pay, as additional damages, to the holder of such notes, twelve per cent. per annum on the amount thereof, for the time during which such payment shall be refused or delayed."

By a previous act of the 24th of January, 1824, all banks had been declared liable to pay six per cent. interest on their notes, when they refused payment on demand, from the time of such demand or refusal.

The only question which arose on the trial of the case was, whether the bank was liable to pay the twelve per cent. in addition to the six per cent. given by the previous act of 1824, or only the twelve per cent. imposed by the act of incorporation.

The contention of counsel in the above case was very much like that urged by counsel for plaintiff in error in the present case, to show which we take the following from the report of the case:

"But the allegation of the plaintiff's counsel is, that the statute of 1824 was not intended by the Legislature to apply to their charter, and that the Court erred in their construction of it; and therefore made

it unconstitutional by their misconstruction. A most strange conclusion from such premises."

Answering this contention, the Court says:

"Did the decision of this point draw in question the validity of either of these statutes, on the ground of repugnancy to the Constitution of the United States? Or was the Court merely called upon to decide on their construction?

"We are of the opinion that there can be but one answer to these questions, and but few words necessary to demonstrate its correctness.

"It is too plain for argument, that, if the act of incorporation had stated, in clear and distinct terms, that the bank should be liable, in case of refusal to pay its notes, to pay twelve per cent. damages in addition to the interest of six per cent. imposed by the act of 1824, the validity of neither of the statutes could be questioned, on account of repugnancy to the Constitution.

* * * * *

"If this Court were to assume jurisdiction of this case, it is evident that the question submitted for our decision would be, not whether the statutes of Ohio are repugnant to the Constitution of the United States, but whether the Supreme Court of Ohio has erred in its construction of them.

"It is the peculiar province and privilege of the State Courts to construe their own statutes; and it is no part of the functions of this Court to review their decisions, or assume jurisdiction over them on the pretense that their judgments have impaired the obligations of contracts. The power delegated to us is for the restraint of unconstitutional legislation by States, and not for the correction of alleged errors committed by their judiciary.

"We are of the opinion, therefore, that this case must be dismissed for want of jurisdiction."

See, also, *St. Paul Co. vs. St. Paul*, 181 U. S. 149.

So in the case at bar, had the charter of the canal company, in clear and unmistakable language, provided that the canal company, at the termination of its charter, should receive no compensation for any property save and except for the value of said railroad, should it construct the same, which the Court held the act of 1858 referred to, there never would have been any claim that the decision of the Supreme Court deprives it of its property without due process of law; and yet that claim is made in the assignment of errors, simply because the Supreme Court held that that was the meaning of the statute, the plaintiffs in error contending that the Court erred in its construction of same, and therefore made it unconstitutional, or thereby took its property without due process of law. Concerning this claim we have but to quote the language used in the foregoing opinion: "A most strange conclusion from such premises."

We leave this phase of the case, therefore, confident that it presents, and that plaintiff in error realized that it presented, no Federal question, and pass on now to another feature of the case, to wit: the act of 1906, which created a Board of Control to assume the management and control of this canal.

Counsel for the canal company, foreseeing in the preparation of its answer the danger of relying solely upon the interpretation placed by them upon the act of 1858 as a means of bringing the case here, felt the necessity of raising some Federal question which might afford it a pretense to bring the case here by writ of error, and ingeniously struck upon Act 161 of 1906, providing for the appointment

of said Board of Control, as affording the canal company that relief. Here, learned counsel reasoned, is a **subsequent act**, and while we feel that they anticipated encountering much difficulty in trying to show this Court some provision therein which contravened its charter, nevertheless the subsequent act was there, and, by raising the question, its possession of the canal might be prolonged; and, hence, there was placed in the answer of the canal company the following paragraph, which, although heretofore set out in the excerpt from the answer, we reproduce for convenience, and which they contend brings up for review a Federal question:

"That (IF) Act No. 161 of the acts of 1906, entitled to provide for the appointment of a Board of Control to assume the management of Bayou St. John and the Carondelet Canal, and to provide for their powers and duties **can be construed** as an act authorizing the said Board of Control to take possession of the property of the Carondelet Canal and Navigation Company, without making the compensation provided for in the act of 1858, **then** that said Act No. 161 is in violation of that clause of the Constitution of the United States which prohibits the State from impairing the obligation of a contract, and also in violation of the Fourteenth Amendment to the Constitution of the United States, as a taking of defendant's property without due process of law," etc.

The act in question reads as follows:

"ACT 161 OF 1906.

"AN ACT

"To provide for the appointment of a Board of Control to assume the management of Bayou St.

John and the Carondelet Canal, and to provide for their powers and duties.

"SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana,* That there shall be appointed by the Governor, by and with the advice and consent of the Senate, a Board of Control for the Bayou St. John and Carondelet Canal and Old Basin, to be composed of five members, not less than three of whom shall reside in the Parish of Orleans, and two of whom shall reside in the Parishes of Livingston, Tangipahoa and St. Tammany; they shall serve for four years from the date of their appointment and until their successors are qualified; they shall elect one of their number as chairman, and three members shall constitute a quorum; they shall elect a secretary, who shall perform such other duties as may be required of him by the board, and whose salary shall not be more than one thousand dollars per annum; the books, minutes and documents of the board shall be open to the inspection of the public; said board shall constitute a body politic and corporate; their domicile shall be in the Parish of Orleans; the Attorney-General shall be their legal adviser, and they shall be dispensed from giving bond and advancing costs in legal proceedings; they shall meet at least once a month, and they may hold special sessions whenever called by the chairman and also at the written request of any two members of the board; they shall serve without compensation, but the members residing outside of the Parish of Orleans may have their actual traveling expenses, to attend the sessions of the board and no more, paid by the board.

"SEC. 2. *Be it further enacted, etc.,* That said board shall have the control and management of the Bayou St. John, Carondelet Canal and Old Basin, and shell road appurtenant thereto; they shall direct all

repairs and improvements and contract for the necessary material and labor, in the most economical manner possible; they shall be authorized to lease whatever property belonging to the canal, not necessary for its management; they shall elect such officers and employ such assistants as in their judgment may be necessary to administer the affairs of said canal—to wit, a superintendent, at a salary of one hundred and twenty-five dollars per month, provided no other salary shall exceed sixty dollars per month; they may exact such bond from their officers and employees as they may judge necessary and may remove them for cause.

"SEC. 3. *Be it further enacted, etc.,* That said board shall regulate the tolls to be paid by vessels using the bayou and canal and the vehicles using the shell road. They shall have the right to make such rules and regulations, not inconsistent with existing laws, and to adopt a system of fines to enforce their regulations, provided no fine imposed shall exceed ten dollars.

"SEC. 4. *Be it further enacted, etc.,* That the money arising from the tolls, towage, shell road and from any other source shall constitute a fund, to be known as the 'Bayou St. John and Carondelet Canal Fund,' and shall be kept separate and apart from other funds of the State, and shall be deposited daily in one of the banks in New Orleans, designated by the board.

"SEC. 5. *Be it further enacted, etc.,* That the secretary shall weekly furnish to the Governor a sworn statement of all amounts received, of the

names, tonnage and arrival of all vessels, of the departure of same, of the daily tolls received and the amounts deposited in bank, and of the detailed expenditures, and he shall furnish such further information as may be required by the Governor.

"SEC. 6. *Be it further enacted, etc.,* That the Governor shall have the right, and it shall be his duty to dismiss from office any member of said board for incompetency, neglect of duty, malfeasance or non-feasance, and to appoint a successor, who shall immediately take possession of the said office.

"SEC. 7. *Be it further enacted, etc.,* That said board shall have the right, and they are hereby empowered to expropriate such property, including public streets, as in their judgment may be needed for the purposes of the Canal, Bayou St. John and Old Basin, and they are further allowed the use of such streets of the City of New Orleans as adjoin the canal and Old Basin, and no railroad shall make any use of same, and the Common Council of the City of New Orleans is hereby prohibited from granting to any railroad company the right to lay tracks upon Basin Street, from St. Louis to St. Peter Street, or upon any other street of the city whereby the use of said canal and basin may be interfered with or obstructed.

"SEC. 8. *Be it further enacted, etc.,* That said board shall have the right, and it shall be required to discontinue the collection of tolls for the use of the shell road, whenever the City of New Orleans shall by proper ordinance agree to keep said road in proper repair, and said board shall have the right to enforce said obligation by summary process in the Civil District Court for the Parish of Orleans.

"SEC. 9. *Be it further enacted, etc.,* That this act shall **take effect on and after the first day of October, 1907**, and all laws and parts of laws in con-

in conflict with this act be, and the same are hereby repealed.

"Approved July 11, 1906."

With regard to this act, the Court will observe at a glance that it is not set up specifically in the answer of the defendant that said act does impair the obligation of its contract, but that the vague averment is made that "if" said act ~~is~~ "construed" as an act authorizing the said Board of Control, appointed by the Governor, to take possession of the canal company's property without making the compensation provided, "then" that said act is in violation of the Constitution of this State and of the United States.

The answer, therefore, does not *especially* set up that Act 161 of 1906 is unconstitutional, by reason of being in conflict with the Constitution of the United States, but only contingently sets up the unconstitutionality of the act; that is, **"if Act No. 161 of 1906 * * * can be construed as an act authorizing the said Board of Control to take possession of the property"** of the canal company, **"then that said act * * *** is in violation of that clause of the Constitution," etc. This, we submit, is not the proper way of setting up the unconstitutionality of an act; it should have been specifically claimed that this act did impair the obligation of its contract, and not have the claim rest upon the contingency that the act is unconstitutional if the Court takes the view that the legislative charter entitles the State to take the property of the canal company without compensation, and that it is constitutional if the Court agrees with the interpretation placed by the plaintiff in error on the act of 1858.

In *Consolidated Turnpike Company vs. Norfolk, etc., R. R. Co.*, 228 U. S. 320, this Court says:

"Under paragraph 237 of the Judicial Code, as under Section 709 of the Revised Statutes, in order to give this Court jurisdiction to review the judgment of the State Court, it must appear that some Federal right, privilege or immunity was *specially* set up in the State Court," etc.

This decision is simply announcing what has been held by a long and unbroken line of decisions of this Court.

See, also, *Chappell vs. Bradshaw*, 128 U. S. 132; *Clark vs. Pennsylvania*, 128 U. S. 397; *Spies vs. Illinois*, 123 U. S. 131, 181, and cases there cited.

But, even if we should concede, merely for the sake of argument, that our position in this respect is not well founded, but that the plaintiff in error has set up the constitutional questions in its answer sufficiently to give this Court jurisdiction, we are next to inquire whether it involves a real, and not a fictitious, Federal question; for it has been held that "a real, and not a fictitious, Federal question is essential to the jurisdiction of this Court over the judgment of State Courts"; and that the "bare averment of a Federal question is not, in all cases, sufficient; that there must be at least some color of ground for such averment."

Hamblin vs. Western Land Co., 147 U. S. 531; *Millingar vs. Hartupee*, 6 Wall. 258; *New Orleans vs. New Orleans Waterworks*, 142 U. S. 79; *Wilson vs. North Carolina*, 169 U. S. 586; *Deming vs. Packing Co.*, 226 U. S. 102.

We are unable to find any ground, and none was assigned in the State Court, giving color to any such contention. We do not see how it can be seriously argued that the act of 1906, providing for the appointment of a Board of Control, is repugnant to any contract rights of the canal company, simply because it provides for the appointment by the Governor of such board to take over the control and management of this canal at the expiration of the canal company's charter, instead of being turned over to the State, as the charter provided. The State, of course, can only act through representatives or boards in the transaction of its business. The charter of the company was to expire by limitation either fifty years from October 17, 1857, or fifty years from March 10, 1858; that is, October 17, 1907, or March 10, 1908, the canal company contending that it expired on the latter date. The Legislature of Louisiana sits biennially in regular session (Constitution of Louisiana, Article 23), and was to meet on the third Monday in May, 1906, and, thereafter, on the third Monday of May, 1908, which latter date was subsequent to the expiration of the charter of the canal company, even according to the claim of the canal company.

Whether March 17, 1907, or March 10, 1908, was to be fixed as the date when the charter rights of the company would expire, it was necessary, even if the charter of the canal company would terminate in March, 1908, according to the canal company's contention, which was fully two months before the Legislature of 1908 was to meet, that the Legislature of 1906 should make provision for taking over this property by the State through a proper representative, otherwise there would be no board in existence to take over the canal when the charter of the canal company expired, and the canal would have to be turned over

to the Governor. Of course, the control and management of the canal and the collection of revenues from vessels entering the canal could not very well be done by the Governor of the State, although the act of 1857 required its turning over of same to the State, and hence arose the necessity of appointing a Board of Control by the Legislature of 1906.

Now, it is not charged in the answer of the canal company that the Legislature knew, when it passed the act of 1906, creating said board, that the canal company was then claiming that, at the expiration of its charter, it would be entitled to compensation, as claimed in its answer of record herein, or that it had ever claimed up to that time that it was entitled to compensation, or that it would take the position, at the expiration of its charter, that the act of 1858 gave it the right to claim compensation, as subsequently developed when the State called for the possession of the canal. Nor was it claimed that the State has taken possession of the canal under that act. Under the circumstances, therefore, it is unfair to make the charge contained in assignment of error No. 4, that it was the intent and purpose of the Legislature, in passing the act of 1906, to take the canal company's property without due compensation, when it absolutely had no knowledge that the canal company would claim such compensation.

Of course, improper motives should never be imputed to a legislative act. "It is conclusively presumed that a Legislature acts * * * in good faith" (*Fletcher vs. Peck*, 6 Cr. 87), and we feel quite sure that this Court will not assume that, in passing the act of 1906, it was the deliberate intention of that body to interfere in any manner with any rights that the canal company might have in respect to the question of compensation that might be due to it by the State, under the act of 1858, at the expiration of

its charter, or that this Court will take the position that it was the intention of the Legislature to have the Board of Control, to be appointed by the Governor, and which has been appointed, take possession of the canal property arbitrarily by means of a posse and assume the management of this property before the time that it was entitled to same by law (*City of Des Moines vs. Des Moines Ry.* 214 U. S. 179), and without giving the canal company its day in court. We think the Court is justified in assuming that the board was rather provided for by the Legislature because of a duty it owed the State, and its citizens, to have in readiness, at the expiration of the canal company's charter, a competent board to manage the property of the State—the Legislature assuming, of course, and acting on the theory, that at the termination of the canal company's charter the claim of the canal company, if any it had, would be settled according to its contract rights as embodied in the acts of 1857 and 1858.

And subsequent events show that neither the State nor the Board of Control appointed pursuant to the act of 1906 placed such an interpretation on the act of 1906, or took possession thereunder. On the contrary, when the charter of the canal company expired by limitation, which, according to the canal company's contention, was in March, 1908, neither the State nor the said board took forcible possession of the canal, nor has it taken possession since, as up to this day the canal company is still in possession of the said property, but the Board of Control requested the Attorney General, long after the termination of the canal company's charter, to make demand for the possession of said canal and to recover the same for it; and when the Attorney General subsequently made demand, and the canal company refused to comply with its request, the State of Louisiana (not the canal company) came into court, through

its Attorney General, and, insisting that the interpretation put by its Attorney General on the contract was the correct one, brought suit in the Civil District Court for the recovery of the said canal, and also for an accounting from the canal company, alleging that, by reason of the expiration of the charter of said company, it was entitled to demand and receive the possession of the said canal from the canal company, together with the property connected therewith, and other relief prayed for. The canal company resisted the State's demand, insisting that its interpretation of the contract, as outlined in its answer, was the correct one.

And it is well to note, in this connection, that the State of Louisiana was proceeding in this case in its own behalf, and was not relying upon the act of 1906, creating the said Board of Control, in support of its demand, but based its demand upon the charter of the company, which gave the canal company its birth, and which the State contended gave it the right to demand and receive the said canal, and all the property and improvements connected therewith, without paying to it compensation; and this position of the State was maintained by the Supreme Court of Louisiana, and judgment rendered, fixing the date when the property of the canal company should have been turned over to the State as March 10, 1908, and *ordering its delivery* "to the State of Louisiana."

In either event, however, it was necessary, even if the canal company was to be compensated by the State for its alleged property at the expiration of the charter, according to the canal company's interpretation of the act of 1858, that either this Board of Control should be appointed to take over the property, or that the same be delivered over to the State, through its Governor; one or the other. The Legislature thought it more advisable to have it turned over di-

rectly to the Board of Control, instead of to the State, as provided in the charter of the company, and, hence, the act of 1906 was passed, the purpose of which, as already stated, was to have a competent board in readiness to administer and manage the canal.

Now, so far as the canal company is concerned, what difference did it make whether it should turn this property over to the Governor, representing the State, or to the Board of Control, representing the State? Because the Legislature passed the act of 1906, and delegated that authority to a board, it is insisted that its contract of 1857 and 1858 has been impaired by said act of 1906, "if" the Court holds that the act of 1858 entitled it to no compensation, a most unfounded contention to our minds. In this respect the assignment of errors is broader than the answer, which simply sets up that "if" said act can be construed as authorizing the board to take over said property, "then" it is in violation of the Constitution of the United States, prohibiting the State from impairing the obligation of contracts; whereas, the assignment of error now says that its contract of 1858 *has been impaired* by the act of 1906, because the Court misconstrued the said act of 1858. In other words, there is no contention here that the act of 1906 has been misconstrued, because it was not touched upon by the Court, but that the act of 1858 was misconstrued, which resulted in rendering the act of 1906 unconstitutional, and thereby the canal company has suffered to the extent set out in the assignment of errors.

As showing how much force there is to this contention, it is perhaps proper to boil down, so to speak, the defense advanced by the canal company. Substantially, the answer of the canal company said to the lower Court:

"If the Court takes the same view of the provisions of the act of 1858 as we do—i. e., that we are entitled to com-

pensation by Section 4 thereof—then the act of 1906, providing for the appointment of a Board of Control to assume the control and management of this property, contains no provision contravening the act of 1858, and is perfectly innocuous.

“But if the Court takes the State’s view of the matter, and adopts the interpretation put upon the act of 1858 by the State, through its Attorney General, that we are not entitled to compensation for said property, then the act of 1906, because of the interpretation put on the act of 1858 by the Court, at once becomes objectionable, impairs the obligations of its contract, divests it of vested rights, deprives it of property without due process of law,” etc.; the canal company advancing the absurd claim that every time the Court takes a different view of a contract than it does there is thereby presented a Federal question for review by the Court.

As a matter of fact, as the Court will readily see by a reading of the act of 1906, creating said Board of Control, the act contains absolutely nothing which gives rise to the claim of impairment of obligations. Nothing is said therein that the State shall or shall not pay for the property of the canal company when the State takes over the property through its Board of Control, and, because of this, counsel for the canal company, in its assignment of errors, advance the claim that the intention to take the property of the canal company without compensation is to be deduced therefrom. But what reason could there have been for the Legislature, in passing the said act of 1906, to have anything to say about the question of compensation? What necessity was there, at that time, for making mention of compensation? The Legislature was dealing with the question of the management of the canal; it was not concerning itself,

and could not very well have dealt, with the question of compensation *vel non* to the canal company, for the very good reason that that matter had already been previously provided for in the acts of 1857 and 1858, and no necessity existed for it to touch upon that subject at that late date. The canal company's rights, if any it had, the Legislature certainly well knew were fixed and determined by the acts giving the canal company its corporate life, and the Legislature wisely abstained from touching upon that subject when it passed the act of 1906.

But if the act of 1906 had never been passed, it is certain that at the expiration of the canal company's charter the same line of procedure would have been undertaken by the State. In other words, the State would have demanded its property under the acts of 1857 and 1858 in the same manner; the company would have refused to turn the same over unless paid compensation under the act of 1858; and the State would have sued for the canal, based upon the canal company's charter, in the same way as it has done in this case, without reference to the act of 1906, and with the same results; and yet complaint is made that, because the act of 1906, above referred to, was passed, it deprived plaintiff in error of its property, although the State was proceeding, to obtain that result, under the act of incorporation. We submit that the act of 1906 was not a factor in the case, was not relied on by the State in support of its claim for the canal, was not touched upon by the Supreme Court in reaching its conclusion, nor necessary to the judgment reached, and, of course, was not given effect.

We think that the claim of a Federal right on this score is without foundation in fact or law. The act of 1906, providing for a Board of Control, must be interpreted as it stands. It is either constitutional or unconstitutional; it

must stand or fall upon its own provisions, and not on the view the Court takes of the act of 1858; and, in order for counsel to succeed in declaring the said act unconstitutional, they must point directly to some provision in the act of 1906 which in clear terms renders the same obnoxious to the charter rights of the company as embraced within the acts of 1857 and 1858. This, it is respectfully submitted, it has not done, and cannot do, and certainly there is nothing in the act of 1906 which even impliedly warrants any such inference.

Although the alleged Federal questions were not touched upon in the court below, in the argument made by the plaintiff in error's counsel, whether oral or printed, and for that reason we cannot anticipate just what their argument will be relative to the other respects in which they may claim that this act impairs the obligation of its contract, nevertheless we feel quite sure that counsel for plaintiff in error will not fail to devote much of their argument in this court to Section 9 of the act of 1906 in question, which section provides: "That this act shall **take effect** on and after the **first** day of October, 1907."

Doubtless the argument will be advanced in this court that this section impairs the obligations of its contract by reason of the provision that the act shall **take effect** on the "first" of October, 1907, whereas its charter, under whatever interpretation may be placed thereon, did not expire until a date subsequent—*i. e.*, either fifty years from October 17, 1857, which would put the date of the expiration of its charter October 17, 1907, some seventeen days later, or fifty years from March 10, 1858, which would place the date March 10, 1908.

But it will be noted, in this connection, that the act was not intended to mean, and does not say, that at that date—

to wit, October 1, 1907—the canal company shall turn over the property, or that the Board of Control to be appointed thereunder shall forcibly take possession of the canal company's property, or that the State at that date shall take possession, but only that the act, authorizing the Governor to appoint this board, shall "take effect" at that date; that is, that the members of the said board may be appointed, or the appointment take effect, at that time. This is simply what the Legislature meant, nothing more. In other words, although the Legislature of 1906 had to deal with the matter of the creation of said board, because the charter of the canal company would expire before it met again in May, 1908, it doubtless thought it unnecessary to provide for the immediate appointment of said board by the Governor, as there was no real necessity therefor until some time prior to the expiration of the canal company's charter, and, hence, the Legislature, at its 1906 session, fixed the date when the act was to take effect, or when the Governor might appoint the said members and the members organize as a board, as October 1, 1907, just about two weeks preceding the date of the expiration of the company's charter by the act of 1857. At that time the Legislature could not tell whether this fifty-year period should date from the original charter in 1857, or from the amended charter of 1858, that matter being in doubt. The Supreme Court, however, decided it should date from the latter act of 1858.

The record will show that, outside of the members of the Board of Control being appointed, nothing was done either by the Governor of the State, by the Board of Control, or anyone else, to take possession of the said canal on October 1, 1907, the date that the act of 1906, creating the said board, went into effect, nor was demand for possession of the canal made until long subsequent to the expiration of the canal company's charter, according to its own showing.

As an illustration, the canal company's charter expired, according to its contention, on March 10, 1908, and yet it was March 5, 1909, a year later, before demand was made by the State, through its Attorney General, for possession of said canal, this demand being made some time after the board had, by resolution adopted at a meeting held October 1, 1908, requested the Attorney General to take such steps as in his opinion would be proper to have the board put in possession of the canal.

The following is a copy of said letter and the reply of the liquidators of the canal company thereto:

"EXHIBIT MARKED 'X-7'. (Rec., p. 58.)

"(Copy of Letter Dated March 5, 1909, Addressed to Messrs. A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators of the Carondelet Canal and Navigation Co. of New Orleans, by the Attorney General.)

"Offered in Evidence by the State.

"Filed March 7, 1910.

"MARCH 5, 1909.

"*Messrs. A. J. Davidson, J. H. Elliott and Hans Widmer, Liquidators of the Carondelet Canal and Navigation Co., of New Orleans, New Orleans, La.:*

"DEAR SIRS—In view of the fact that the time during which the Carondelet Canal and Navigation Company of New Orleans has had the right to enjoy the possession and control of the Carondelet Canal and Bayou St. John, together with the Old Basin, with all of the revenue derived therefrom, has expired, and that it becomes the duty of the State of Louisiana, through the Board of Control for the

Bayou St. John and Carondelet Canal and Old Basin, to take possession of the said Carondelet Canal, Bayou St. John and Old Basin, together with all the property and improvements connected therewith, or in any wise thereto belonging or appertaining, in order that the same may be controlled, managed and administered by said board, for the use and benefit of the State, and in view of the further fact that, at a meeting of said Board of Control, held on the first day of October, 1908, a resolution was adopted requesting me, as Attorney General of the State, to take such action as in my judgment would be proper to 'have the State put into possession of the Bayou St. John, Carondelet Canal and Old Basin, and all its properties and rights,' I now hereby make formal demand upon you to deliver into the possession and control of the said Board of Control of the Bayou St. John and Carondelet Canal and Old Basin the said Bayou St. John and Carondelet Canal and Old Basin, together with all the properties and improvements connected therewith or in any wise thereto belonging or appertaining. In default of your complying with this formal demand within a reasonable delay, I now notify you that I will institute suit for the purpose of recovering for the State, to be controlled, managed and operated by the Board of Control aforesaid, the said Carondelet Canal and Bayou St. John and Old Basin, together with all the properties and improvements connected therewith or thereto belonging or appertaining.

"Be pleased to let me hear from you at your earliest convenience, and oblige,

"Yours truly,

(Signed) "WALTER GUION,

"Attorney General."

"EXHIBIT MARKED 'X-8.' (Rec., p. 59.)

("Reply to Foregoing Letter.)

"Offered in Evidence by State.

"Filed March 7, 1913.

"NEW ORLEANS, LA., March 13, 1909.

"Hon. Walter Guion, Attorney General, State of Louisiana, New Orleans, La.:

"DEAR SIR—Your letter of March 5, 1909, to Messrs. A. J. Davidson, J. H. Elliott and Hans Widmer, liquidators of the Carondelet Canal and Navigation Company of New Orleans, in which you demand, in behalf of the Board of Control for the Bayou St. John and Carondelet Canal and Old Basin, the **delivery and possession** of the Carondelet Canal, Old Basin, Bayou St. John, together with all the properties and improvements connected therewith or in any wise thereto belonging or appertaining, has been handed to us as attorneys for Messrs. Davidson, Elliott and Widmer, liquidators, for answer.

"Whenever the State complies with her contract obligations with the Carondelet Canal and Navigation Company, as declared in Section 4 of Act No. 74 of the Acts of 1858, the liquidators will be pleased to comply with the demand to deliver the canal property to the representatives of the State.

"The canal company has already complied with the provisions of that section, so far as is incumbent upon it, by appointing Mr. Philip Werlein the commissioner to represent it in the award which the statute provides shall be made, fixing the compensation to be paid by the State on taking over the canal property.

"We, as counsel for the company, on March 10, 1908, notified the Governor of the State of this ap-

pointment, requesting the Governor to appoint a commissioner representing the State, and requesting the Governor to join the liquidators in an application to the Civil District Court for the Parish of Orleans to name the third commissioner. The Governor has ignored these communications beyond acknowledging receipt thereof.

"We have advised our clients that the action of the State in appointing a Board of Control to take possession of this canal, and to manage it, is an election by the State to take the reversion of the property, and this the State cannot do, under the terms of the contract between the State and the Carondelet Canal and Navigation Company, unless and until it shall have paid the compensation fixed as provided in the contract. As no compensation has been fixed or tendered or provided for by the Legislature, we must, on behalf of the liquidators, decline your demand for delivery.

"Your obedient servants,

(Signed) "EDGAR H. FARRAR,

"PENJ. T. WALDO,

"WM. C. DUFOUR,

*"Attorneys for A. J. Davidson, J. H. Elliott and Hans
Widmer, Liquidators Carondelet Canal and
Navigation Company."*

It is seen from this reply of the liquidators of the canal company to the Attorney General that no complaint is made therein that the act of 1906 deprived the canal company of its property without due process of law, or impaired the obligation of its contract, as is made in the assignment of errors. Its sole complaint was that it was entitled to compensation for said canal and property con-

nected therewith, to be made by appraisers under the act of 1858, and which the Supreme Court held it was not entitled to, and the whole tenor of its reply shows a willingness to turn over the property to the State, provided the State should accede to its demand for compensation. No complaint is made in said letter that the State "does not own the canal, and never did own the canal," as is urged in the assignment of errors, and in the answer, nor was any averment made that said property was the property of the United States. It was willing to turn it over to the State, but compensation must be paid it as a prerequisite before doing so.

We submit that by the letter of the liquidators, by the excerpt from the brief of counsel, and by a reading of the canal company's answer, which contains, and could contain, no averment that the State has taken, or even attempted to take, its property, on the date when the act of 1906 went into effect, no Federal question is presented, and the case should be dismissed.

But even if we should concede, *arguendo*, that the Legislature, by the passage of said act, intended that the Board of Control, for which it made provision, should take possession of said canal when the act takes effect—to wit, October 1, 1907—and, therefore, that the act, in that respect, would be obnoxious to the canal company's charter contract, it is submitted, nevertheless, that the canal company cannot complain of its provisions and charge that it impaired the obligations of its contract, unless it shows that the obnoxious provision of the act was enforced. As shown by the letters above quoted, however, the act was not given that interpretation by the State, nor by the board, no such legislative intention is warranted, and its property was not taken from it at that date by the State

nor by said board. And even in the decree of the Supreme Court of Louisiana the date set down by the Court upon which the State was held entitled to an accounting, as also entitled to take possession of the canal and property connected therewith, is not October 1, 1907, the date fixed in the act of 1906 when the said act shall "take effect," but March 10, 1908, the date when the canal company contended its charter expired, showing conclusively that no effect was given to the act of 1906, even if it should be held that it contained obnoxious provisions. This being true, in what respect can the canal company complain that it has been injured? How can it show that the act of 1906 has impaired the obligations of its contract should it advance a claim on that part of the act, when the Supreme Court has given it the very interpretation the canal company insisted should be given to it? At best, it would be a moot question.

Fortunately, the State of Louisiana has the benefit of an adjudication of this Court on the subject, and is, therefore, not without a precedent. In *Kennebec, etc., R. R. vs. Portland etc., R. R. et al.*, 14 Wall. 23, the Court had before it a case wherein the plaintiff in error contended that, as the act of mortgage made by it was executed in 1852, a subsequent act of 1857 impaired the obligation of its contract, because the method prescribed in this latter act was obnoxious to its said contract of mortgage entered into as aforesaid in 1852. In disposing of this contention the Court said:

"The mortgage was made in 1852. The statute referred to was passed in 1857, and the foreclosure complained of was had shortly after.

"If this were all of the case, we should undoubtedly be bound in this court to inquire whether

the act of 1857 did, as construed by the Court, impair the obligation of its contract. (*Bridge Proprietors vs. Hoboken Co.*, 1 Wall. 116 [68 U. S. XVII, 571].)

"But a full examination of the opinion of the Court shows that its judgment was based upon the ground that the foreclosure was valid, without reference to the statute of 1857, because the method pursued was in strict conformity to the mode of foreclosure authorized, when the contract was made, by the laws then in existence.

"Now, if the State Court was right in their view of the law as it stood when the contract was made, it is obvious that the mere fact that a new law was made does not impair the obligation of the contract. And it is also clear that this Court cannot inquire whether the Supreme Court of Maine was right in that opinion.

"Here is, therefore, a clear case of a sufficient ground on which the validity of the decree of the State Court could rest, even if it had been error as to the effect of the act of 1857 in impairing the obligation of the contract. And when there is such distinct and sufficient ground for the support of the judgment of the State Court we cannot take jurisdiction, because we could not reverse the case though the Federal question was decided erroneously in the court below against the plaintiff in error."

Citing *Rector vs. Ashley*, 6 Wall. 142, and other cases.

So we say, even if the Court were to take the position and hold that Section 9 of the act of 1906, by providing that its provisions shall take effect on October 1, 1907, was obnoxious to the charter rights of the canal company, yet, as the Supreme Court of Louisiana did not give effect to any obnoxious provision of said act by compelling the canal

company to turn over the property on October 1, 1907, but held that it should turn over the property as per the provisions of the act of 1858, on March 10, 1908, as per the canal company's contention, and which is in strict conformity with the laws in force when the contract was executed, the canal company cannot complain nor set up a Federal question by reason of this provision, since the plaintiff in error has not been injured by the passage of the act, as the Court gave no effect to any of its provisions; and, if it has not been injured, then it cannot complain.

Looking at this case from any angle, we are earnestly of the opinion that this Court should hold that it has no jurisdiction, and that the act of 1906 contains no provisions impairing the obligations of its contract (*Des Moines vs. Ry. Co.*, 214 U. S. 179); that, even if any obnoxious provision can be found, the same was not given effect by the Court, its decision resting on an independent ground not involving a Federal question; and that, so far as the act of 1906 being an impairment of the canal company's charter, the act was rather passed in aid of the canal company in the consummation of its contract, to the end that there might be a representative of the State ready and willing to take charge, control and management of the canal when turned over to it by the canal company, and passed by the Legislature for no other purpose.

It has been held that "only when the judgment of a State Court gives effect to a law subsequent, * * * which, it is alleged, constitutes a contract, can the Federal Supreme Court review the judgment and decide the question of contract (*Mobile, etc., R. R. vs. Mississippi*, 210 U. S. 187); and, as already shown, the judgment of the Supreme Court has not given effect to the said law.

And in *Cross Lake Club vs. Louisiana*, 224 U. S. 632, the Court says:

"When the State Court, either expressly or by necessary implication, gives effect to a subsequent law of the State, whereby the obligation of a contract is alleged to be impaired, a Federal question is presented; * * * but if there be no such law, or if no effect be given to it by the State Court, we cannot take jurisdiction, no matter how earnestly it may be insisted that that Court erred in its conclusion respecting the validity or effect of the contract; and this is true even where it is asserted, as it is here, that the judgment is not in accord with prior decisions on the faith of which rights in question were acquired."

Citing many cases.

And in *Klinger vs. Missouri*, 80 U. S. (13 Wall. 257, 263), Mr. Justice Bradley declared the rule to be well settled that:

"Where it appears by the record that the judgment of the State Court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws or treaties of the United States, or upon some independent ground, and it appears that the Court did, in fact, base its judgment on such independent ground, and not on the law raising the Federal question, this Court will not take jurisdiction of the case, even though it might think the position of the State Court an unsound one."

In *New Orleans Waterworks vs. Louisiana Sugar Ref. Company*, 125 U. S. 18, the Court said:

"And in many recent cases, under Section 709 of the Revised Statutes, this Court, speaking by the

Chief Justice, has reasserted the rule that, to give it jurisdiction of a writ of error to the State Court, it must appear affirmatively not only that a Federal question was presented for decision to the highest Court of a State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. (*Brown vs. Atwell*, 92 U. S. 327; *Citizens' Bank vs. Board of Liquidation*, 98 U. S. 140; *Chouteau vs. Gibson*, 111 U. S. 200; *Adams County vs. Burlington, etc., R. Co.*, 112 U. S. 123; *Detroit City R. Co. vs. Guthard*, 114 U. S. 133.)"

The true rule to be pursued in a case coming to this Court by writ of error is announced in the well-considered case of *Murdock vs. Mayor*, 20 Wall. 590, 635, and since followed, from which we take the following:

"Finally, we hold the following propositions on this subject as flowing from the statute as it now stands:

"1. That it is essential to the jurisdiction of this Court over the judgment of a State Court that it shall appear that one of the questions mentioned in the act must have been raised and presented to the State Court.

"2. That it must have been decided by the State Court, or that its decision was necessary to the judgment or decree rendered in the case.

"3. That the decision must have been against the right claimed or asserted by plaintiff in error under the Constitution, treaties, laws or authority of the United States.

"4. These things appearing, this Court has jurisdiction, and must examine the judgment in so far

as to enable it to decide whether this claim of right was correctly adjudicated by the State Court.

"5. If it finds that it was rightly decided, the judgment must be affirmed.

"6. If it was erroneously decided against plaintiff in error, then this Court must further inquire whether there is any other matter or issue adjudged by the State Court which is sufficiently broad to maintain the judgment of that Court, notwithstanding the error in deciding the issue raised by the Federal questions. If this be found to be the case, the judgment must be affirmed without inquiring into the soundness of the decision on such other matter or issue.

"7. But if it be found that the issue raised by the question of Federal law is of such controlling character that its correct decision is necessary to any final judgment in the case, or that there has been no decision by the State Court of any other matter or issue which is sufficient to maintain the judgment of that Court without regard to the Federal question, then this Court will reverse the judgment of the State Court, and will either render such judgment here as the State Court should have rendered, or remand the case to that Court, as the circumstances of the case may require."

And it has since been held in *Arkansas Southern Railway Company vs. German National Bank*, 207 U. S. 270, that:

"According to the well-settled doctrine of this Court with regard to cases coming from State Courts, unless a decision upon a Federal question was necessary to the judgment, or, in fact, was made the ground of it, the writ of error will be dismissed.

"And even when an erroneous decision upon a Federal question is made a ground, if the judgment also is supported upon another, which is adequate by itself, and which contains no Federal question, the same result must follow, as a general rule. Moreover, ordinarily this Court will not inquire whether the decision upon the matter not subject to its revision was right or wrong."

And the principles announced in the above case were again affirmed in *Consolidated Turnpike Company vs. Norfolk, etc., R. R.*, 228 U. S. 320, where this Court said:

"Assuming, therefore, that this certificate operates to show some Federal question was decided when the petition to rehear was refused, yet, if it also appears that the judgment of the State Court against the plaintiff in error was based upon a question of general law broad enough to support its decision, this Court will not consider the Federal question, though it was considered and determined by the Court below adversely to the plaintiff in error."

In *Rutland R. R. vs. Central Vermont R. R. Co.*, 159 U. S. 630, the Court said (syllabus):

"When the highest Court of a State, in rendering judgment, decides a Federal question, and also decides against the plaintiff in error upon an independent ground, not involving a Federal question, and broad enough to support the judgment, this Court will dismiss the writ of error without considering the Federal question."

See, also, the following cases to the same effect:

Wood vs. Chesborough, 228 U. S. 672; *Jenkins vs. Lowenthal*, 110 U. S. 222; *Beaupre vs.*

Noyes, 138 U. S. 397; *Wood Co. vs. Skinner*, 139 U. S. 293; *Hammond vs. Johnson*, 142 U. S. 73; *Taylor vs. Cass County*, 142 U. S. 288; *Delaware Co. vs. Reybold*, 150 U. S. 361; *Simmerman vs. Nebraska*, 116 U. S. 54; *Powder Co. vs. Davis*, 151 U. S. 389; *Missouri Pac. Ry. vs. Fitzgerald*, 160 U. S. 556; *Fowler vs. Lamson*, 164 U. S. 252; *Iowa Central Ry. vs. Iowa*, 160 U. S. 389; *Long Island Water Supply Co. vs. Brooklyn*, 166 U. S. 685; *Miller vs. Railroad Co.*, 163 U. S. 131; *Chappell Chemical Co. vs. Sulphur Mines Co.*, 172 U. S. 471; *Capital City Dairy Co. vs. Ohio*, 183 U. S. 238; *Preston vs. Chicago*, 226 U. S. 447; *Chesapeake, etc., Ry. vs. McDonald*, 214 U. S. 193; *Columbia Water Power Co. vs. Ry.*, 172 U. S. 475; *Fowler vs. Lamson*, 164 U. S. 252.

And in *DeSaussure vs. Gaillard*, 127 U. S. 222, this Court held that, even where a Federal question is properly presented in the court below, and the State Court really passes upon the Federal question, and decides it adversely to the plaintiff in error, still, if that question is not necessary to the judgment, this Court will not review the same.

We have already stated that the act of 1906 is the only matter that could afford the plaintiff in error any pretense for the assertion of a Federal question, and, having shown, as we think, that the same presents no Federal question, no other Federal contention will be found at issue herein. But plaintiff in error seeks to inject into the case another so-called Federal question by averring that the Orleans Navigation Company acquired its rights under Chapter 1

of the acts of the Legislative Council of the Territory of Orleans, approved July 3, 1805, and by alleging that the Congress of the United States authorized the President of the United States to cause the Canal Carondelet to be extended to the Mississippi River, and making an appropriation of \$25,000 to carry out this project, which project was "never carried out by the President." It is also alleged that, by the act approved April 18, 1814, 6 St. at Large 144, the Congress of the United States granted to the Orleans Navigation Company a lot fronting on the Bayou St. John, 180 by 540 feet, and another lot, 300 by 600 feet, by an act of Congress, approved April 16, 1816—all of which is set up, as we think, to give color to its claim that, because of said grants by the United States, a Federal question is presented, although the plaintiff in error is not the Orleans Navigation Company, nor its immediate successor, and the validity of these grants were not drawn in question.

But this does not give rise to a Federal question, as has been time and again held by this and inferior United States Courts, nor is the plaintiff in error in a position to raise that question.

In *Florida Central R. R. vs. Del.*, 175 U. S. 328, 329, it is said by this Court:

"The mere assertion of a title to land derived to the plaintiff under and by virtue of a patent granted by the United States presents no question which, of itself, confers jurisdiction on a Circuit Court of the United States. (*Blackburn vs. Portland Gold Min. Co.*, 175 U. S. 571.)"

See, also, *Romie vs. Cassanova*, 91 U. S. 370; *Gold Wash Co. vs. Keyes*, 96 U. S. 199; *Murray vs. Mining Co.*, 45 Fed. 386; *McStay vs. Friedman*, 92 U. S. 723; *Hastings vs. Jack-*

son, 112 U. S. 232, and *Theurkauf vs. Ireland*, 27 Federal 769, in which latter case it is said:

"It might as well be claimed that it is a proper case for jurisdiction by alleging that the plaintiff claims title by virtue of a patent issued by the United States, without stating that there is any question arising upon a disputed construction of the patent, or any dispute as to its validity."

"Where a title or right as derived from a treaty or act of Congress is not drawn in question, but the question is one as to a transfer of such title, or construction in relation thereto, the Supreme Court has no jurisdiction."

Miller vs. Swann, 150 U. S. 132; *Chever vs. Horner*, 142 U. S. 122; *Mill vs. Merrill*, 119 U. S. 581; *Gill vs. Oliver*, 11 How. 529; *Maney vs. Porter*, 4 How. 55

In *Delamar's etc., Mining Co. vs. Nesbit*, 177 U. S. 523, this Court says:

"We have repeatedly held that to sustain a writ of error from this Court, something more must appear than that the parties claim under an act of Congress." (Citing *Blackburn vs. Portland Min. Co.*, 175 U. S. 571.)

Continuing, the Court says:

"If the law were otherwise, then every land case wherein one of the parties claimed title, either immediately or remotely through a patent of the United States, would present a Federal question; and, as most of the land titles in the Western States of this country are traceable back to a right under the laws of the United States, every such case might be held

reviewable by this Court on writ of error. This position, of course, is untenable. * * *

"To raise a Federal question, the right must be one claimed under a particular statute of the United States, the validity, construction or applicability of which *was made the subject of dispute* in the State Court." (Page 528.)

And the Court holds that the writ of error

"will only lie where the decision is adverse to the right claimed," citing many cases.

This should dispose of this phase of the plaintiff in error's claim, because, as will be seen from the record, there is no dispute concerning these Federal grants, the only dispute in the court below being as to the proper interpretation of the provisions of the act of the Legislature of Louisiana of 1858, as has been heretofore related. In fact, no better proof of this (if any were needed) can be found than from the statement of the counsel for plaintiff in error, when, as defendant in the court below, they say in their brief:

"The clear meaning of this act (referring to Act No. 74 of 1858) is, that the State gives the corporation a free and absolute grant of corporate life, without condition or price, and reserves the right to take its property, at the end of fifty years, upon making due compensation, to be determined as proved."

This was the whole dispute in the case—the right of the canal company to compensation. This is made clearer by a reference again to the reply of counsel of the liquidators of the canal company, who represent them here, showing

the willingness of the canal company liquidators to turn over the property upon being paid compensation according to an award. We take the following from the letter of the liquidators of the canal company, wherein, replying to the letter of the Attorney-General asking possession of the canal, counsel say :

"Whenever the State complies with her contract obligations with the Carondelet Canal and Navigation Company, as declared in Section 4 of Act No. 74 of the Acts of 1858, the liquidators will be pleased to comply with the demand to deliver the canal property to the representatives of the State."

This shows so plainly that the matter in dispute was the construction by the Supreme Court of the statutes of its own State of 1857 and 1858, and not the validity or construction of the said Federal grants, that any further argument on this branch of the case would seem to be unnecessary.

We say, then, that it is not material to the disposition of this case to inquire whether the canal company did or did not acquire, by its charter or grant, the canal property and improvements connected therewith, for whether it did so or not, the fact remains, as shown by the position taken by the canal company before and after this case went to court, and as shown by the construction put upon the canal company's charter by the Supreme Court, that it was agreed, in and by its charter, and as a consideration for the grant by the State to it, to surrender the said property to the State at the end of its fifty-year charter. If it be admitted that it was to surrender the same (and the canal company admits this), what difference does it make whether part or all of the property was acquired by the Orleans

Navigation Company or by its successor, the canal company, or the present plaintiff in error, under Federal or any other grants, so long as there was nothing in the grants which prohibited the plaintiff in error from surrendering the same to the State upon being given a valuable fifty-year existence, and we have been referred to no such provisions.

The ownership of the property, although undoubtedly in the State, was not a factor in the decision of the case, and when counsel relate these grants from Congress and its alleged property rights in the canal and bayou, we answer: Even if it be true that the canal company acquired a fee simple title to this entire property, including the bayou and basin and the grants of land detailed in the answer, they have failed to point out anything in the grants which would deprive them of the right to surrender these lands for a grant of charter rights of the character given to it by the State under the acts of 1857 and 1858. And as the canal company agreed to surrender all of its property upon the terms specified in the act of 1857 and the act of 1858, as a consideration for said grant, and as it has enjoyed that property for fifty years, and the surrender date has long since terminated, it is now its sacred duty to turn same over to the State of Louisiana, and the only question constantly recurring is: Did the act of 1858 mean to give it compensation for this property, even if the canal company can be viewed in the light of having acquired the same by Congressional and other grants? And the decision of this question, as has already been shown by numerous authorities, is not a Federal but a local question of the construction by the Courts of its own statutes, and unless some subsequent law is pointed out which impairs the obligation of plaintiff in error's contract, this Court cannot assume jurisdiction, however much it may

be urged that the decision of the State Court in that respect was erroneous.

State vs. Cross Lake Club, 224 U. S. 632; *Snell vs. Chicago*, 152 U. S. 191.

This, in our opinion, disposes of all Federal questions that can possibly arise in the record before your Honors.

In this court the plaintiff in error has filed the following assignment of errors:

FIRST. That the Supreme Court of Louisiana erred in ignoring the Federal questions raised by the defendant in its answer and in its petition for a rehearing.

SECOND. That the Supreme Court of Louisiana erred in not holding that Act No. 160 of 1857 and Act No. 74 of 1858 constituted a contract between the State of Louisiana and the defendant company, protected from impairment by paragraph 1 of Section 10 of Article 1 of the Constitution of the United States.

THIRD. That under the defendants' contract with the State, as expressed in the Act No. 160 of 1857 and the Act No. 74 of 1858, its property rights upon the Carondelet Canal, Old Easin and Bayou St. John could not be taken from it except on compensation previously made and determined, as provided in the act of 1858; and, therefore, the Act No. 161 of 1906, which appointed a Board of Commissioners and directed it to take possession of said property without compensation to defendant, is an impairment of the obligation of defendant's contract with the State, in contravention of Section 10 of Article 1 of the Constitution of the United States, of which last act the Supreme Court of Louisiana has, by its judgment in this cause, given full force and effect

by decreeing that this defendant shall deliver to the State the said Carondelet Canal and Bayou St. John and Old Basin, together with all the property and improvements appurtenant thereto, without compensation to the defendant.

FOURTH. That it was the intent and purpose of the State of Louisiana to violate the obligation of its contract with the defendant by the passage of said Act No. 161 of the Acts of 1906, and the Supreme Court of Louisiana has, by its decisions in this cause, carried out said purpose and given full force and effect to said act of 1906, whereby that act is made operative and this defendant deprived of its contract rights in contravention of Section 10 of Article 1 of the Constitution of the United States, as aforesaid.

FIFTH. That the State of Louisiana does not own, and never did own, the Carondelet Canal and Old Basin, but that said Carondelet Canal and Old Basin were and are the property of the United States, on which this defendant has the rights granted by the act of the Legislative Council of the Territory of Orleans of 1805, which rights it owns by a direct chain of title from the original grantee, the Orleans Navigation Company; that defendant acquired said rights with the consent of and by the acts of the Legislature and Courts of the State of Louisiana, under the agreement and contract that it would transfer such **rights and the improvements made on said canal and basin** to the State of Louisiana on compensation previously made, and that the judgment and decree of the Supreme Court of Louisiana in this cause, above set forth, is a taking of defendant's property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

SIXTH. That the Bayou St. John was, in 1805, at the time of the incorporation of the Orleans Navigation Company by the Legislative Council of the Territory of Orleans, a nonnavigable stream in fact; that the said Legislative Council had authority under the Constitution and laws of the United States to grant to the Orleans Navigation Company the right to enter upon and improve said stream; that when said State of Louisiana was created, whatever title it got to said stream was subordinate to the Federal grant made by the said Legislative Council to the Orleans Navigation Company; that defendant is the owner of all the rights on said stream granted by the Legislative Council of said Territory to the Orleans Navigation Company by direct chain of title, obtained with the consent of and by the acts of the Legislature and the Courts of the State of Louisiana, under the agreement and contract that it would transfer such rights and the improvements made on such Payou St. John to the State of Louisiana on compensation previously made, and that the judgment and decree of the Supreme Court of Louisiana in this cause, as above set forth, is a taking of defendant's property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

SEVENTH. That the Supreme Court of Louisiana erred in using against the defendant the report of the Special Master filed in the matter of *Wheelock et al. vs. St. Louis & San Francisco R. R. Co.*, No. 13,244 of the docket of the United States Circuit Court for the Eastern District of Louisiana, because said report was never offered in evidence, and because the said report was objected to by the parties to that litigation, and was never confirmed, the objections never having been tried and disposed of, and that the action of the

Court in using said report to determine the rights of the defendant in this case is a taking of defendant's property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

EIGHTH. That the Supreme Court of Louisiana erred in its decree because the effect of said decree is to confiscate to the use of the State the property and property rights of the defendant in, to and upon the Bayou St. John, Carondelet Canal and Basin and the property and improvements connected therewith and appertaining thereto, purchased and constructed with the money of defendant and acquired by it through its privies in title by grants from the United States, all of which is a taking by the State of Louisiana, through the instrumentality of the judgment of the Supreme Court of the State of Louisiana, of defendant's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, defendant prays the judgment of the Supreme Court of the United States on these assignments, and prays that, on due hearing, the judgment of the Supreme Court of the State of Louisiana may be annulled and reversed with costs, and the judgment of the Civil District Court in and for the Parish of Orleans, rendered in the cause be annulled and reversed, and that there be judgment ordering the dismissal of the plaintiff's suit.

We have endeavored to show to the Court that there is no Federal question presented by the record on file, without attempting to follow out and argue the alleged Federal contention set up by the plaintiff in error in its assignment of errors, some of which are broader than those raised in the

State courts, and some of which are absolutely frivolous and were not raised therein.

For instance, complaint is made that the **decision** of the Court deprives it of its property without due process of law. But this is not subsequent legislation, and the Court must pass this claim unnoticed. But if the canal company has not had due process of law, in the State Court, then it is difficult to know what that term means.

"When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a State Court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment to the Constitution of the United States. (*Central Land Co. vs. Laidley*, 159 U. S. 110; *Walker vs. Sauvinet*, 92 U. S. 90; *Head vs. Amoskeag Mfg. Co.*, 113 U. S. 9, 26; *Morley vs. Lake Shore & M. S. R. Co.*, 146 U. S. 162, 171; *Bergemann vs. Backer*, 157 U. S. 655.

As held in *Londoner vs. Denver*, 210 U. S., at p. 379:

"We see nothing in the sixth assignment of error. It is apparently based upon the proposition that, in construing a law of the State in a manner which the plaintiffs in error think was clearly erroneous, the Supreme Court of the State exercised legislative power, and thereby violated the Fourteenth Amendment. We are puzzled to find any other answer to this proposition than to say that it is founded upon a misconception of the opinion of the Court and the effect of the Fourteenth Amendment."

In *Standard Oil Co. vs. Missouri*, 224 U. S. 270, this Court said:

"The Fourteenth Amendment guarantees that the defendant shall be given that character of notice

and opportunity to be heard which is essential to due process of law. When that has been done, the requirements of the Constitution are met, and it is not for this Court to determine whether there has been an erroneous construction of statute or common law. (*Iowa, etc., R. R. vs. Iowa*, 160 U. S. 389; *West vs. Louisiana*, 194 U. S. 261.)"

See, also, *Twining vs. New Jersey*, 211 U. S. 110.

And other unfounded Federal claims are set up, as, for instance, Assignment of Error 7, that the Supreme Court erred in using against the defendant the report of the Special Master filed in the matter of *Whelock vs. St. Louis & San Francisco R. R.*, from the United States Circuit Court, Eastern District of Louisiana, because the said report was not filed in evidence. As if this raises a Federal question!

However, it is a sufficient answer to this complaint to say that all reference to same was by the Court stricken from the opinion when the Court's attention was called to it, showing that the opinion of the Court was not based upon this report, but upon its own examination of the matters at issue and the decisions of its predecessors in cases in which the plaintiff in error and its predecessors were parties.

See record, page 262, wherein it also appears that the plaintiff in error asked, and was granted, permission to have the Clerk of the Supreme Court of Louisiana transmit to this Court the record with the said opinion of the Court embodied therein as first rendered, without omitting the part stricken out by the Court.

Other errors are assigned, but, as stated before, believing that the same are either unfounded or not raised in the court below, and that the matters argued in our brief touch upon every point of a Federal character that might possibly arise, or be presented, from the matters at issue in the court

below, we leave this subject, confident that no Federal questions are shown.

ON THE MERITS.

Should your Honors come to the merits of the case, we feel an abiding conviction that the recital thereof by the Louisiana Supreme Court, together with its application of the law thereto, will be found to be correct.

In order to understand the case, it would not be out of place here to give, in brief, a history of the canal the subject of this litigation.

Bayou St. John was a navigable stream previous to the cession of Louisiana to the United States.

The original canal, connecting said bayou with what is now the Old Easin, was dug by the Baron de Carondelet, Governor of the Louisiana Province, in 1794, when Louisiana belonged to Spain. All of the land through which it was dug was then public property. The evidence in the suit of *Orleans Navigation Co. vs. The Mayor, etc., of New Orleans*, 1 Martin (O. S.), 274, shows that the first canal was dug by convicts and partly by negro slaves, whose labor was given without charge by the inhabitants of the City of New Orleans.

From the case of *State vs. Orleans Navigation Company*, 11 Martin (O. S.), 107 *et seq.*, we learn that the use of the Canal Carondelet as a drainage canal had caused it to be nearly filled when the United States acquired Louisiana in 1803, and one of the first things which the Territorial Legislature did was to pass an act in 1805 incorporating a company, known as the "Orleans Navigation Company," to which was given the right to charge tolls on all bayous and canals in Louisiana which it would improve and render navigable.

The charter of this company contemplated the digging and improving by it of canals anywhere in Louisiana, the title of the act reading: "An act for improving the inland navigation of the Territory of Orleans."

On March 18, 1809, the Legislature of Louisiana passed an act which declared "that the improvements of the Orleans Navigation Company *shall not extend to the Bayou Plaquemine,*" and on March 3, 1814, another act was passed which declared "that the operations of said canal *shall be confined and restricted to the improvement of the inland navigation of the Island of Orleans.*"

These two acts resulted in the work of this company being confined to the improvement of Bayou St. John and the Canal Carondelet.

The charter of the Orleans Navigation Company gave it "perpetual succession," but in 1852 its charter was judicially forfeited, and its property sold, and its affairs liquidated.

See *State vs. Orleans Navigation Company*, 7 An. 679.

The nature and extent of the rights and franchises that had been granted to the Orleans Navigation Company were the subject of litigation in several suits during the existence of that company—to wit, *Orleans Navigation Company vs. Mayor et al.*, 1 Martin (O. S.), 269; *Orleans Navigation Company vs. Mayor et al.*, 2 Martin (O. S.), 10, 214.

The Legislature of Louisiana at its session in 1821 (Acts of 1821, p. 132) directed the Attorney General to bring suit

"to ascertain by due and competent authority, first, the constitutional validity of the aforesaid charter [of the Orleans Navigation Company], and, second,

whether the same, if constitutional, be not forfeited by reason of the nonfeasance and malfeasance, the illegal and oppressive actings and doings, of said company."

This suit was brought, and the lower Court decided against the company. The company appealed, and the Supreme Court reversed the judgment of the lower Court, and held that the legislative charter of 1805 was constitutional and valid, and had not been forfeited by nonfeasance.

See 11 Martin (O. S.), 329, 330.

The Supreme Court said in that case:

"It does not appear to us that there has been any alienation of the soil, nor that the bayou has ceased to be a public highway" (p. 329).

Later on the Orleans Navigation Company became insolvent and unable to maintain the canal and bayou in a fit condition for navigation, and the Legislature, by Act No. 244 of 1847 (p. 202), directed the Attorney General to take steps to forfeit its charter.

This suit was decided against the State by the lower Court, but the Supreme Court decided that the company had forfeited its charter. This judgment was rendered in February, 1852.

See *State vs. Orleans Navigation Co.*, 7 An. 679.

Anticipating the rendition of this judgment, the Legislature of Louisiana passed Act No. 309 of 1852 (p. 209), directing that, in the event of a forfeiture of the charter of this company by the Supreme Court, a liquidator should be appointed to take possession of and sell "the entire *property*

of said company, real and personal, movable and immovable." (See Section 1 of act.)

The fourth section of this act provided that the purchasers might form a corporation, under the general incorporation laws of the State, for twenty-five years, for the purpose of carrying out, within three years, the improvements of the bayou and canal as shown in Harrison's reports and plans. This corporation so to be formed, on furnishing bond in the sum of \$50,000, "to the satisfaction of the State Treasurer," to secure the completion of the said improvements in three years, was to have the right, only, from the date of its organization,

"to receive and exact all such tolls and revenues *for the use of said canal, bayou and road* as the Orleans Navigation Company was entitled to receive under its charter." (Our italics.)

See Sections 4 and 5 of Act No. 309 of 1852 (p. 209).

In compliance with that act and with the judgment rendered in the case (reported in 7 An. 679), a liquidator was appointed, who sold the property of the Orleans Navigation Company, in obedience to an order of Court, at public auction, and it was bought by James Currie and others, as will fully appear by act of sale before Richard Brennan, a notary public of New Orleans, passed on June 28, 1852. (Rec., p. 41.)

These purchasers then incorporated themselves under the general laws of this State, under the name and style of the "New Orleans Canal and Navigation Company," by act before John Broadhead, a commissioner for the State of Louisiana in Pennsylvania, executed October 19, 1852,

which act of incorporation was recorded in New Orleans on October 27, 1852, in the Mortgage Office, Society Book No. 3, p. 2, and is of record herein.

As the Orleans Navigation Company had no ownership of, or title to, Bayou St. John, the Carondelet Canal, or the Old Basin, but merely the right to use the same in consideration of tolls to be received, it was not attempted, at the sale of its property by the liquidator, when Currie and others bought all of its property, to sell either the bayou, the canal or the basin, for it had been decided by the Supreme Court, in the case reported in 11 Martin (O. S.), 143-4, 148-9, 151 and 329, that there had been no *alienation* to the Orleans Navigation Company, nor could there well have been, since the State acquired the bayou and canal by right of sovereignty on her admission into the Union.

In fact, the very title of the act of 1805, creating the Orleans Navigation Company, reads: "An act for improving the inland navigation of the Territory of Orleans," for which it was given perpetual succession.

All that it owned was the franchise to maintain the canal, basin and bayou in a navigable condition, and to charge tolls for so doing; and when its successor, the New Orleans Canal and Navigation Company, took charge, it acquired no greater rights in and to this canal than its predecessor had possessed; and the same is true of the plaintiff in error.

The New Orleans Canal and Navigation Company, being thus formed for the purpose of operating the canal property, went into possession of it; but, as was held by the Supreme Court, it only acquired, at the liquidation sale above referred to, the property of the Orleans Navigation Company, since all the franchises and privileges of that com-

pany had been extinguished by the forfeiture of its charter, except the franchise to charge tolls, which had been kept alive by the act of 1852, for the Supreme Court said :

"Hence, the 'entire property of said company, real and personal, movable and immovable,' of which the liquidator was to take possession and sell at auction, according to the first section of this act [of 1852], only embraced corporeal things owned by, and moneys due to, the company.

"This property did not embrace the chartered rights of the company, which, before the sale, had been extinguished beyond recall."

See *New Orleans Canal and Navigation Co. vs. City*, 12 An. 365.

This decision was rendered in 1857, and it had the effect of making the obligations of the New Orleans Canal and Navigation Company more onerous and expensive than it had expected, and, in anticipation of a decision being rendered against this company, the Legislature on March 16, 1857, passed Act No. 160, to incorporate the Carondelet Canal and Navigation Company, the purpose being to take over from the New Orleans Canal and Navigation Company such improvements as had been made to the canal and Bayou St. John, upon the terms to be agreed on between the two companies; and, no doubt, realizing that the new company ought to be given the franchise and privileges which had been enjoyed by the original Orleans Navigation Company, Act No. 160 of 1857 expressly conferred upon the Carondelet Canal and Navigation Company the franchises, rights and privileges which had been given to the Orleans Navigation Company under Sections 9 to 13

of the act of 1805, since Section 10 of the act of 1857 declares:

"That this corporation may and can take and receive, possess, hold and enjoy, all and singular, the rights, privileges, franchises, immunities, powers and authority which were at any time granted to, received, possessed, enjoyed and exercised by the late Orleans Navigation Company under Sections 9, 10, 11, 12 and 13 of an act entitled 'An act for the improving the inland navigation of the territory of Orleans,' approved July 3, 1805, as well as those exercised and enjoyed at this time by the said New Orleans Canal and Navigation Company by act approved March 12, 1852."

Thus, the Carondelet Canal and Navigation Company came into existence, and it proceeded to purchase the property of the New Orleans Canal and Navigation Company by act before E. Bouny, notary, passed on July 3, 1857. This act of sale likewise did not undertake to transfer to the Carondelet Canal and Navigation Company the canal itself, the basin, or the Bayou St. John, but only such rights of the vendor therein as are described as follows:

"All the rights, immunities, franchises and privileges whatsoever which they, as a corporation created under the laws of Louisiana, held or claimed to hold over the property known as 'Carondelet Canal,' the Bayou St. John, its tributaries and dependencies of whatever nature, generally, whether those rights, immunities, franchises and privileges result from any public or private law, or from any public or private act of incorporation, hereby resigning now and forever all their said corporate rights, immunities, franchises and privileges into the hands of the Carondelet Canal and Navigation Company, in the

true intent and spirit of the act of the Legislature of Louisiana, incorporating the same, and as fully as if the same had been duly canceled and annulled by a regular and final decree of forfeiture."

In 1858, by Act No. 74, the Legislature undertook to enlarge the authority theretofore given to the Carondelet Canal and Navigation Company by authorizing it:

FIRST. To construct *layouts, basins and half-moons* in the roads or streets bounding the canal. (Sec. 1.)

SECOND. To construct a railroad for freight or passengers along the canal from the basin to the lake, with the right to expropriate private property; provided, however, that it should not employ steam locomotives within such limits of the city as the Common Council might prescribe, and that the road thus built should be subject to such other general police regulations as the Council might adopt. (This road was never built.)

THIRD. To prevent the city from draining into Bayou St. John after five years from the passage of the act on March 10, 1858.

Thus, it will be seen that the Carondelet Canal and Navigation Company had no rights or privileges beyond those conferred by the acts of 1857 and 1858, and that such rights and privileges as had been conferred upon the Orleans Navigation Company by Sections 7 and 8 of the act of 1805 were not revived, and that the present defendant is not entitled to the same.

It will be further seen that at no time has the defendant, or the New Orleans Canal and Navigation Company, or the Orleans Navigation Company, ever had any right of ownership in, or title to, the Bayou St. John, the

Canal Carondelet, or the Old Basin, but that the same have always been, and are now, the property of the State of Louisiana.

Not only is it a fact that the State owns this entire property to the exclusion of all other persons, but that fact has been frequently recognized by the Courts of this State and admitted by defendant itself.

In the case of *State vs. Orleans Navigation Company*, 7 An. 679, the Supreme Court said:

"The Bayou St. John was a navigable stream previous to the cession of Louisiana to the United States. The Spanish Governor, the Baron Carondelet, excavated the basin and canal to connect the navigation of the bayou with the rear of the city."

In the suit of *State vs. Orleans Navigation Co.*, 11 Martin (O. S.), 143, 144, the Supreme Court held that the Carondelet Canal and Bayou St. John belonged to the State as public property which had never been alienated. (See, also, pages 148, 149, 151, and especially page 329, where it was held that "it does not appear to us that there had been any alienation of the soil, nor that the bayou has ceased to be a public highway.")

In *City of New Orleans vs. Carondelet Canal and Navigation Co.*, 36 An. 397, in which the plaintiff sought to hold defendant liable for city taxes, the Supreme Court said:

"It cannot be with plausibility claimed that the exemption was to operate technically, exclusively, as far as the canal and the railroad were concerned. *The canal was State property*, and, of course, as such, necessarily exempt."

In *Carondelet Canal and Navigation Company vs. City of New Orleans*, 38 An. 309, this Court refers to the rela-

tion of that company toward the State as that of a lessee of the State, for, in speaking of the right of the company to use a certain space between Claiborne and Galvez Streets as a landing for vessels running in the canal, it declares that

"this privilege is one of the rights, among others, that the company derived from the State, *by lease*, in 1857."

And in *Carondelet Canal and Navigation Co. vs. City of New Orleans*, 44 An. 396, the Supreme Court said:

"The Bayou St. John was a navigable stream, and Canal Carondelet was known as the work of the Spanish Governor whose name it bears. As public property, it became a part of the public domain at the cession of Louisiana."

Not only has the Supreme Court of Louisiana declared that the Carondelet Canal, Old Basin and Bayou St. John are the property of the State, but defendant has, itself, judicially admitted that fact, for in the suit of *Carondelet Canal and Navigation Company vs. City of New Orleans*, 44 An. 394, it claimed that it was a lessee of this property from the State, and that the State owned it.

In that case the Supreme Court says:

"The collection of the tax was being enforced by seizure and sale, when an injunction was sued out on the grounds that plaintiffs are *the lessees of the said property*, and are entitled to the franchises of its predecessor, the Orleans Navigation Company, and that the property, *being owned by the State, will revert to the State at the expiration of its charter*" (p. 396). (Our italics.)

And, further :

"The land on which taxes are claimed plaintiff admits in its petition and in its brief belongs to the State. It was donated by Congress on April 18, 1814" (p. 397).

And in the suit of *Singer vs. Carondelet Canal and Navigation Company*, 39 An. 478, the defendant set out in its answer the following allegations—to wit:

"Respondent, further answering, denies that plaintiff is the owner or is entitled to the use of the land to the water edge; respondent avers that, by its charter aforesaid, it is entitled to the use of the banks of the said bayou for the purposes for which its charters were granted, to load and unload vessels, etc.; and, besides, it is given twenty feet in width for a road. * * * Wherefore, respondent prays that the injunction prayed for be dissolved; that there be judgment for defendant as lessees of the Canal Carondelet and Bayou St. John."

It is seen, then, that in litigation not only in which the Orleans Navigation Company was a party, but in which the very plaintiff in error was a party, the Courts have very consistently held that the Carondelet Canal and Old Basin were the property of the State of Louisiana, and acquired by the State by virtue of her sovereignty. And in this case the Court again found, after a most exhaustive examination of all cases in which the canal property was in litigation, and from the testimony given in these cases, that the canal in litigation here was a navigable stream when the State was admitted into the Union, that the State owned the same, and that the canal had also been a navigable stream, actually used as such, for the purposes of commerce, dur-

ing a period beyond the memory of man. It would also appear from the above narrative that the canal company has not always been consistent in its contentions about the ownership of the said canal, for, when it was to its interest so to do, it took the position that the State owned the said canal, and that it was merely a lessee of the State; and, now that it is to its interest to take a different position, it shifts its former claim, and denies any ownership of the State in and to said property.

In the lower court, and in the Supreme Court, the State took the position that, because of the attitude taken by the canal company in solemn judicial proceedings, the canal company was estopped from now asserting that the State did not own the said canal; and it seems to us that the plaintiff in error, by reason of these admissions, should be held estopped from taking the position it now does. In fact, that question seems to have been long ago foreclosed by the above decisions. But, if the canal company is not estopped from raising that question now, in spite of the position of the company and these decisions, nevertheless its claim that the State does not own said canal is, to say the least, exceedingly weak-kneed, in view of its former conduct.

Referring to this feature of the case, the Supreme Court said:

"(1) With regard to that property, it seems to have been fairly demonstrated by the testimony adduced in the cases of *Orleans Navigation Company vs. Mayor*, 1 Mart. (O. S.) 269; 2 Mart. (O. S.) 10, 214; *State vs. Orleans Navigation Company*, 11 Mart. (O. S.) 38, by the attitude and admissions of the company, and the rulings of the Court in those cases, and in the cases subsequently arising, to which the successors of the Orleans Navigation Company

were parties, and by other facts and circumstances disclosed in the record, that, when the Orleans Navigation Company was created, the Bayou St. John had been a navigable stream, actually used as such for the purposes of commerce during a period beyond the memory of man; that it was so used at that time, and has been so used ever since; that the Carondelet Canal was excavated under the direction of the Baron de Carondelet, representing the Spanish Government, mainly at the expense of the citizens of the province, who furnished three-fourths of the required labor (as against one-fourth furnished by the Government), and to whom appeals were made for help in a public work, to be excavated through public land," etc.

The Court having decided that the State had always owned the said canal, dating from its admission into the Union, and inasmuch as this decision involved the title of the State to its water bottoms, we think that the decision of the Supreme Court of Louisiana on that point is conclusive on the one here presented.

Illinois Central Railroad Company vs. Chicago, 176 U. S. 659, from which we take the following, says:

"Under the laws of the State of Illinois, as laid down by the Supreme Court, not only in the case under consideration, but in the prior case of *People vs. Kirk*, 162 Ill. 138, 146, 'the State holds the title to the lands covered by the waters of Lake Michigan lying within its boundaries, but it holds the title in trust for the people, for the purpose of navigation and fishery.

"The State has no power to barter and sell the lands as the United States sells its public lands, but the State holds title in trust in its sovereign capacity, for the purpose of the entire State."

Continuing, the Court says:

"Such was also the ruling of this Court in a case between the same parties, *Ill. Cent. R. R. vs. Illinois*, 146 U. S. 387, affirming *Illinois vs. Ill. Cent. R. R.*, 33 Fed. 730. This, too, is a question of local law with regard to which the decisions of the State Courts are conclusive. (*Packer vs. Bird*, 137 U. S. 661; *Hardin vs. Jordan*, 140 U. S. 371.)"

It is difficult to understand just what the plaintiff in error meant when it stated, in its answer, that the State does not own the said canal—whether it meant that the title thereto was in the United States, or whether it intended to have the Court understand that it claimed title in itself?

But since this Court has held in *Barney vs. Keokuk*, 94 U. S. 338, that:

"The soil of navigable waters belong to the States by their inherent sovereignty,"

and in *Shively vs. Bowlby*, 152 U. S. 57:

"That they (the navigable streams) never belonged to the United States, but were only held by it in trust for the several States, to be ultimately created out of the territory," and that the State cannot barter or sell same, and, of course, could not donate them,

there can be no questioning the State's ownership, as against that of the United States. And, since the Supreme Court of Louisiana has held on several occasions, in cases in which the Orleans Navigation Company was a party, that the State's title to the canal in controversy was absolute, we feel quite sure that your Honors will not disturb that ruling, especially when the present plaintiff in error acquired its

rights in and to the canal subject to the construction placed thereon by the Courts prior to its acquisition of a charter, and which construction, in legal effect, formed part of the charter of the Carondelet Canal Company, the present plaintiff in error, the same as if written in bold type into the canal company's charter of 1857. In other words, when the canal company was granted its charter, and took over the canal in litigation herein, it did so subject to the construction placed on the rights of the Orleans Navigation Company, and with full knowledge of these various rulings, and as the Orleans Navigation Company did not complain of these rulings, but acquiesced therein, the present canal company, which alleges itself to be the successor of said Orleans Navigation Company, certainly cannot, at this late date, make complaint about these rulings, and seek to question these decisions.

It is difficult to understand, however, how it can be claimed that the Orleans Navigation Company was the owner of this property, when the only right granted to that company was the right to enter upon said property and improve the navigation thereof, and collect tolls from vessels, the title of the act incorporating the Orleans Navigation Company reading: "An Act for Improving the Inland Navigation of the Territory of Orleans." There was certainly nothing in the title of this act, nor in the body thereof, which could possibly be construed as a donation to said Orleans Navigation Company of the Bayou St. John, Carondelet Canal and Old Basin, and the Orleans Navigation Company was therefore held not to have acquired the ownership of this property. And this ruling was absolutely correct, for, as shown above in the case of *Illinois Central Railroad vs. Chicago*, the State holds its title to lands covered by

navigable waters in trust for the people, for the purpose of navigation, and has no power to barter and sell the same, but must hold the same in trust, in its sovereign capacity, for the purpose of the entire State; and, if the State cannot sell or barter away its navigable streams, it certainly cannot give them away. Therefore, if the Orleans Navigation Company never acquired the ownership of this canal, it is certain that the present plaintiff in error never acquired greater rights than the Orleans Navigation Company had.

But, although we have touched upon the question of the ownership of this canal, we do not wish to be understood as contending that that question was necessary to the decision of this case, nor do we think the canal company serious in this defense, for, as we shall now see, although it raised that contention in one part of its answer, another part of its answer discloses that it practically abandoned that position; and this is also shown, too, by its printed argument, before the Supreme Court, which, although no part of the record is before your Honors, we think plaintiff in error will admit contains the language which we shall hereafter quote therefrom.

For instance, although the plaintiff in error says, in its answer,

"That the State of Louisiana never, at any time, claimed any right, title or ownership in or to the Canal Carondelet, and the improvements thereon made by the Orleans Navigation Company" (Record, p. 21);

and again:

"Defendant particularly denies that the State owns and is entitled to possess, control, manage and administer for the use of the public all that certain

property or area known as the 'Carondelet Canal, Bayou St. John and Old Basin,' situated in the Parish of Orleans, together with all the property and improvements connected therewith or in any wise

thereto belonging or appertaining,"

yet these averments are followed by this statement in the answer :

"That whatever rights the State has in and to this property are derived only from the **contract rights** existing between the Carondelet Canal and Navigation Company and the State of Louisiana, as defined in the acts of 1857 and 1858, and

"This defendant avers that the said statutes of 1857 and 1858 constitute a contract between the State of Louisiana and the Carondelet Canal, protected from impairment, etc. (Record, pp. 21, 22), and that

"It has always been ready and willing to comply with the provisions of the charter of 1857, as amended by the charter of 1858, and is now ready and willing to deliver the Canal Carondelet and the Basin and the Bayou St. John to the State of Louisiana upon the payment to it of the value of said property as fixed by an award of three commissioners, one appointed by the company, one by the Governor, and one by the Civil District Court for the Parish of Orleans, and that until this award is made the amount thereof paid it has the right to hold and enjoy the said property."

And, as showing further this fact, we refer to page 33 of the brief of the plaintiff in error filed in the Supreme Court of Louisiana, which contains the following admission :

"As stated above, the sole issues in the case are :

"FIRST. Compensation *vel non*.

"SECOND. If compensation is due, must it be previously made before taking?"

And as again showing that fact, we quote the following excerpt which the Supreme Court of Louisiana took from the brief filed by the canal company in the court below, to be found on page 212 of the record filed herein, wherein the canal company argued:

"The clear meaning of this act (referring to the Act 74 of 1858) is that the State gives the corporation a free and absolute grant of corporate life, without conditions or price, and **reserves the right to take its property** at the end of fifty years, upon making due compensation, to be determined as provided."

Here, then, it appears, from the last excerpt from its argument in the Supreme Court of Louisiana, that the canal company forgot itself and admitted the ownership of the Bayou St. John and Carondelet Canal to be in the State, the claim being advanced that, by the act of 1858, the State "reserves the right to take **its** property at the end of fifty years," but insisting that this could only be done by the State "upon making due compensation."

Although we referred to this feature of the case before, we have deemed it advisable again to call the matter to the Court's attention for the purpose of bringing out clearly the real defense of the canal company, which shows clearly that the canal company rested same on the construction of the act of 1858, and that the question of the ownership of the canal property was not a factor in the case, as was the question of the true interpretation to be given to the said act of 1858, and, hence, we repeat that this Court

is simply called on by the pleadings, by the entire attitude of the company and the above showing, to say whether or not the Supreme Court of Louisiana placed the correct interpretation upon the act of 1858.

However, the Supreme Court, of necessity, in passing upon the claim of the canal company had to refer to prior legislation on the subject and to the decisions of its predecessors in litigation concerning this canal, to which the canal company, or its predecessor, was a party, which had a bearing on the subject in reaching its conclusion, for, if it had already been determined by prior adjudications of the Court, and if it were a fact that the ownership of the canal in question was in the State and the Court was of the same opinion in this case, then the claim of the canal company that it was the intention of the Legislature, by the act of 1858, to give it a corporate life of fifty years, absolutely free, together with a tax exemption—both State and municipal—and to throw in this valuable canal and bayou for *lagniappe*, although the State owned the same by right of sovereignty, was, to say the least, necessarily ludicrous and entitled to no consideration whatever. Hence, the Court went into an examination of the acts creating the Orleans Navigation Company and its successors to show the fallacy of the canal company's claim of ownership of this canal, and by a process of elimination and exclusion, finally came to the conclusion that the act of 1858 only referred to a railroad, authorized by the act of 1858 to be built, but which was never constructed.

But the question of ownership was not an issue, but a pure question of construction—whether, under the act of 1858 the canal company was entitled to compensation or not for such property, whatever it may consist of, to which the act of 1858 referred.

In other words, whether the canal company owned the Bayou St. John, Carondelet Canal, Old Basin, in fact, the entire Parish of Orleans, was not material to the issue, for, when it came before the Legislature and was granted a charter, it agreed, in consideration of the grant of corporate life given it, to surrender the said property at the expiration of its charter (whatever it might be), upon the conditions laid down in the acts of 1857 and 1858.

What those conditions were was the only subject to be gone into by the Supreme Court, and, having gone into that matter, it came to the conclusion that the act of 1858, as above stated, was only intended to mean that the canal company was to be compensated for a railroad authorized by that act to be built, and which, never having been built, entitled the canal company to no compensation whatever, except that, as "to any other property, movable or immovable, not appurtenant to said waterway and roadways," decision thereon was reserved "for further adjudication in this proceeding."

And this brings us to the question whether the Supreme Court was right in the conclusion arrived at with respect to compensation claimed. Of course, this Court will at once perceive that the Supreme Court of Louisiana—the highest Court in Louisiana—was called upon to construe and interpret its own statutes, which interpretation this Court will follow.

As said in *Rowan vs. Runnels*, 5 How. 139:

"Undoubtedly this Court will always feel itself bound to respect the decisions of the State Courts, and from the time they are made will regard them as conclusive in all cases upon the construction of their Constitution and laws."

And, as said in *Missouri, etc., R. R. vs. McCinn*, 174 U. S. 586:

"The elementary rule is that this Court accepts the interpretation of the statute of a State affixed to it by the court of last resort thereof."

See, also, *Enfield vs. Jordan*, 119 U. S. 680; *Ridings vs. Johnson*, 128 U. S. 212; *Clement vs. Packer*, 125 U. S. 309.

And see, further, *Elmendorf vs. Taylor*, 23 U. S., 10 Wheat. 152, holding:

"Its interpretation is accepted as the true interpretation, whatever may be our opinion of its original soundness."

And it has been held that this is so, even though there may have been a close division of opinion between the members of the State Supreme Court (*Williams vs. Eggleston*, 170 U. S. 311, and that:

"If we are bound by the interpretation of the statute, we need not review the reasoning by which that interpretation was reached."

And this ought to result in the affirmance of the judgment, without going into the reasoning by which that result was reached.

But, should your Honors go into that reasoning, we feel satisfied that your Honors will conclude, as did the lower Court, that the Carondelet Canal, Old Basin and Bayou St. John are the property of the State, and that the defendant holds towards that property and the State the relation of lessee.

The position of the State is that, when it entered into the contract with the defendant through Act No. 160 of 1857, it was expressly understood and agreed that defendant would enter into possession of the canal, Bayou St. John and Old Basin and to operate the same for profit by charging tolls for its use by boats engaged in navigating the same. Section 20 of that act provides that defendant should enjoy this use for twenty-five years, without let or hindrance, from and after October 17, 1857, at which time the State might elect to take possession of the entire property on paying to defendant for "all the property and improvements connected therewith," but that, in the event the State should elect not to take possession of the canal, Bayou St. John and the Old Basin at the expiration of the first twenty-five years' term, then, and in that event, defendant should continue to operate that property for an additional period of twenty-five years, and that,

"at the end of such second term of twenty-five years, the said property may still become absolutely the property of the State of Louisiana, and no compensation required to be made to this corporation."

The State of Louisiana elected not to take possession of its property at the end of the first term of twenty-five years, and permitted defendant to continue in possession thereof for a second term of twenty-five years, which ended on October 17, 1907, at which time it had the right to demand the property from the defendant, as well as "the property and improvements connected therewith," which, at that time, should "become absolutely the property of the State of Louisiana, and no compensation required to be made" to defendant.

The act of 1857 nowhere contemplates that the State of Louisiana should pay to the Carondelet Canal and Navigation Company for anything except for such "property and improvements" as might be "connected therewith," and this only in the event that the State should take over and assume control of that property at the expiration of a period of twenty-five years from and after October 17, 1857; but it was further distinctly declared in said act that, at the expiration of fifty years from the above date (October 17, 1857), the State of Louisiana would become the absolute owner of all these improvements without compensation to be made to defendant.

It is, however, claimed by defendant that this act was repealed by an act passed in 1858, being Act No. 74 of 1858, which defendant urges against plaintiff's right to take possession of the Carondelet Canal property without first reimbursing it, not only for the property and improvements which that company may have added to the canal property, but for the canal itself, the Old Basin and the Bayou St. John, for in its answer defendant says:

"It has always been ready and willing to comply with the provisions of the charter of 1857, as amended by the charter of 1858, and is now ready and willing to deliver the Canal Carondelet and the Basin and the Bayou St. John to the State of Louisiana upon the payment to it of the value of said property, as fixed by an award of three commissioners, one appointed by the company, one by the Governor, and one by the Civil District Court for the Parish of Orleans; and that, until this award is made and the amount thereof paid, it has the right to hold and enjoy the said property."

We have already shown that all that the Legislature ever intended by Act No. 160 of 1857 should be paid to defendant, under any circumstances, on the State's taking possession of the canal property, was for such "property and improvements" as might be "connected therewith"; but nowhere has the Legislature ever intimated or suggested that the State would be under any obligation to pay the canal company for the canal itself, or for Bayou St. John, or the Old Basin, all of which have always been, and are now, the property of the State.

As just stated, defendant relied upon Act No. 74 of 1858 as authority for the claim that the State must reimburse it for the canal, Bayou St. John and the Old Basin, and property appurtenant thereto, before the defendant could be compelled to deliver up any of this property to the State. This claim is utterly without foundation.

Act No. 74 of 1858 nowhere declares that the State is under any obligation to pay to defendant for the canal, Bayou St. John or the Old Basin, for the Legislature knew full well that the State owned, and had always owned, all of that property, since its admission into the Union, for the use of the public, and that it would owe nothing to defendant for the same. In fact, the State, even if it had wanted to do so, could not barter or sell the same, and, if it could not do this, it certainly could not donate it to the canal company, which is what we construe the canal company's contention to be, if we understand it correctly. Hence, all that defendant might claim from the State under the terms of Act No. 74 of 1858 would be a reimbursement of the value, at the time of delivery to the State, of such "layouts, basins and half-moons for steam or other watercraft" which it might have constructed either on the Bayou St. John, the Basin or the Canal, as well as the value of such

railroad with single or double tracks which it might have constructed on either side of the basin, canal or bayou. This, evidently, was the only property for which defendant might claim compensation at the expiration of the fifty-year term ending March 10, 1908, under the terms of Section 4 of the act of 1858, wherein it is declared that the defendant company shall enjoy corporate succession during fifty years from March 10, 1858, after which time

"it may revert to the State, upon due compensation being made according to award by three commissioners, one appointed by the Governor of the State, one by the company, and the third by any court of record of New Orleans."

The railroad was never built, nor was the digging of "layouts, basins and half-moons for steam or other watercraft" undertaken.

Section 4 of Act 74 of 1858 does not inform us what is meant by the word "*it*" which is to revert to the State, nor for what the State should make "due compensation" to defendant on taking possession of the canal, the basin and Bayou St. John; but it will not be difficult to understand what was intended by the Legislature when the act of 1858 is read by the light of Act No. 160 of 1857, and when it is considered what additional privileges were given to the defendant by Sections 1 and 2 of the act of 1858.

It must be remembered that by the act of 1857 (Section 14) the president and directors of the defendant company had the right

"to do everything necessary for the construction, repair and maintenance of the improvements of the navigation of the canal and bayou hereinbefore described, as well as for the construction of docks,

wharves and other improvements deemed necessary, and for the purpose of speedily and properly making said improvements to purchase all machines and other equipments deemed by them necessary or useful to the purposes of the company";

and it is for all such property and improvements "connected" with the canal, basin and bayou which, by Section 20 of that act, the State obligated itself to reimburse the defendant, should it take the canal property at the end of the first term of twenty-five years, and for which it would make "no compensation" should it not elect to take possession at that time, and await the fifty-year period.

On the other hand, when, by Act No. 74 of 1858, defendant was given the additional authority "to construct layouts, basins and half-moons," as authorized by that act, as well as a single or double track railroad, as authorized by it, and when it was provided by Section 4 of the same act that "due compensation" should be made to it "according to award by three commissioners" appointed in the manner directed by that section, it must be apparent that the Legislature intended that, when the canal, basin and bayou would be returned to the possession of the State at the end of fifty years from March 10, 1858, the State would make "due compensation" to defendant, according to award, for only such new or additional improvements, such as layouts, basins, half-moons and single or double track railroad, as defendant might construct during that period, and which have never been constructed.

It will hardly be seriously contended, however, that defendant had the right to claim payment from the State for any other property or improvements belonging or appurtenant to the Canal, the old Basin or the Bayou St.

John, since, by Section 20 of Act No. 160 of 1857, defendant agreed and bound itself to deliver up all such property to the State at the end of fifty years from October 17, 1857, without compensation.

It is evident that the General Assembly did not intend by Act No. 74 of 1858 to alter or vary in the least the terms of the contract which the State had made with defendant in and by Act No. 160 of 1857, but that, on the contrary, that the contract should stand in respect to the delivery to the State of all the property and improvements connected with the canals, the bayou and the basin, except, perhaps, all such layouts, basins, half-moons and railroads as might be constructed under the authority given to it by Sections 1 and 2 of Act No. 74 of 1858. Act No. 160 of 1857 was not repealed by Act No. 74 of 1858, as was held by the Supreme Court in the case of *Carondelet Canal and Navigation Co. vs. Luggier 1st, Chevere Tedesco and Owner*, 37 An. 102; although, as said by the Court in that case,

“the terms of the last act were sufficient to continue the mere corporate existence for fifty years.”

In other words, our contention is that, while the defendant's corporate existence may not have ended on October 17, 1907, but was continued until March 10, 1908, by the terms of Act No. 74 of 1858, nevertheless it was never, at any time, the intention of the Legislature, in passing said Act No. 74 of 1858, to interfere with the rights which the State had already acquired under its contract with defendant (evidenced by Act No. 160 of 1857), of taking possession of the canal, basin and bayou at the expiration of fifty years from March 10, 1858, without compensating defendant for such property and improvements

as were "connected" with the canal, basin and bayou in the operation of the same, save, perhaps, for all new improvements, such as a railroad, layouts, basins and half-moons, as might be constructed under the authority given for the first time by Act No. 74 of 1858.

Any other interpretation of Act No. 74 of 1858 would make it fail to harmonize with Act No. 160 of 1857, which the Supreme Court of this State held was not repealed by the act of 1858, and would, besides, make the last-named act unconstitutional by reason of its being in conflict with Article 109 of the Constitution of the State of Louisiana of the year 1852.

Article 17 of the Civil Code provides:

"Laws *in pari materiae*, or upon the same subject-matter, must be construed with reference to each other; what is clear in one statute may be called in aid to explain what is doubtful in another."

Now, if that rule be observed in this case, as was done in the lower court, your Honors will have no difficulty in the interpretation and determination of the respective rights of the State and of the defendant, and this without disturbing either the act of 1857 (Act No. 160) or the act of 1858 (Act No. 74).

Your Honors will find, by carefully observing this rule, and by interpreting the act of 1858 by the act of 1857:

FIRST. That the State had the right, at the end of a term or period of fifty years from October 17, 1857, to take possession of the Canal Carondelet, the Old Basin and Bayou St. John, without making any compensation to defendant for any of the property or improvements which the latter had "connected therewith," to use the language of Section 20 of Act No. 160 of 1857.

SECOND. That Act No. 74 of 1858 had not, as was held by the Supreme Court in the *Tedesco case*, 37 An. 102, repealed Act No. 160 of 1857, and, therefore, the last-named act is still alive and in force, except that the corporate existence of defendant had been extended for fifty years from March 10, 1858, instead of its terminating fifty years from October 17, 1857.

THIRD. That, as the defendant company had been given the right by Act No. 74 of 1858, which it did not have under the act of 1857, to construct a railroad, with single or double track, on either side of the basin, canal and Bayou St. John, from the head of the basin, on Toulouse Street, to the lake, as well as "layouts, basins and halfmoons," it is this property only for which it might claim compensation under Section 4 of that act.

By adopting this interpretation of these two acts, your Honors would harmonize them both, and, without doing violence to either, you would carry out the true meaning and intent of the Legislature when, by not repealing Act No. 160 of 1857 at the time it enacted Act No. 74 of 1858 into law, it made it plain that the defendant should surrender to the State at the end of fifty years from March 10, 1858, the entire Canal Carondelet, Old Basin and Bayou St. John, without any claim whatever for compensation for any of the property or improvements which it might have added to them, except that it might have the right to claim compensation for such layouts, basins, half-moons and railroad that it might have constructed since the date of the approval of Act No. 74 of 1858 on March 10, 1858.

Besides, as already said, any other interpretation which would deprive the State of the right to claim, without compensation, all other improvements and property added by defendant to the canal, basin and bayou, under

the terms of Section 20 of Act No. 160 of 1857, would be unconstitutional, and a most violent presumption to indulge in, in view of the facts disclosed.

By Article 109 of the Constitution of 1852, the Legislature of this State had the right to grant the aid of the State to companies or associations of individuals formed

“for the exclusive purpose of making works of internal improvement, wholly or partially within the State, to the extent only of one-fifth of the capital of such companies, by subscription of stock, or loan of money or public bonds,”

provided, always, that the State, for the aid thus given, would be guaranteed against loss by “such adequate security” as it “may seem proper” that the Legislature should require.

Now, if the position of the State be correct—that, under the terms of Section 20 of Act No. 160 of 1857, all the property and improvements added to the canal, basin and Bayou St. John by the defendant company, or which, in the language of that section, may be regarded as “connected therewith,” should be returned to the State without compensation, except, perhaps, for such railroad, layouts, basins and half-moons as by Act No. 74 of 1858 defendant was authorized to construct, and for which it would, on delivery of same to the State, receive “due compensation” under the terms of Section 4 of that act—it follows, as a legal proposition, that payment by the State to defendant for such property and improvements would be the granting of aid to it, in violation of Article 109 of the Constitution of 1852, which positively prohibited the granting of aid by the State to any company or corporation which had been formed “for the exclusive purpose of making

works of internal improvement," except to the extent only of one-fifth of the capital of such company, and then only "by subscription of stock or loan of money or public bonds."

Nowhere, however, can authority be found in that article of the Constitution of 1852 for the granting of aid by the State to any corporation or company organized for the exclusive purpose of making internal improvements by the giving to it of any property or thing of value belonging to the State, especially a navigable stream, as would be the case should this Court hold that the State is obligated to pay to defendant the value of the said property, which belonged, and was to belong, to her at the end of the corporate existence of the defendant company; and thus your Honors must observe that any attempt, in construing the act of 1858, to give such an interpretation to same would be to defeat the right of the State to take possession of the canal, basin and bayou, its own property, without making compensation, and, hence, would be tantamount to holding that the State, by the act of 1858, intended to, and did, donate its property to the canal company and must now pay it to retake same, which was clearly unauthorized by the Constitution of 1852, against public policy, and a violation of the sovereign duty of the State.

Hence, we say that the extent of the claim that defendant might prefer against plaintiff, if entitled to compensation at all, would be one for compensation for such "layouts, basins and half-moons" and such railroad as might be constructed by it under the authority given to it by Section 1 of that act. This is the position which counsel for the State took in the lower courts, and which it takes in this court.

In other words, it is our contention, and we think a reading of the acts will bear us out, that the Carondelet

Canal and Navigation Company holds this property of the State as under a lease, its relation towards the State being that of a lessee, with the State as lessor; and we submit that, even if the canal company were entitled to claim the compensation claimed in its answer, it is no defense to the State's demand for possession of the property.

Baudry-Lacantinerie, "Du Contract de Louage,"

Vol. 2, p. 1, No. 1395; *Spears vs. Flack*, 34

Mo. 101; *Tallman vs. Coffin*, 4 N. Y. 134.

This case was thoroughly argued before the Supreme Court of the State, and was maturely considered before the Court handed down its original opinion. A rehearing was applied for, and granted, and the case was reargued, and again the Court took the matter under advisement for several months before announcing a decision, which decision substantially reaffirmed its former judgment; and we feel that, by reason of this fact, and the further fact that the Supreme Court of Louisiana went most learnedly and thoroughly into the whole matter, we can safely rely upon the correctness of the judgment sought to be reviewed herein.

However, before concluding we desire to call the attention of the Court to the fact that the Court found the language which it was called upon to construe exceedingly vague and indefinite, and, applying the well-settled principles in such cases, followed the rule of interpretation laid down by all Courts and text-writers.

On this point the Court said:

"It will be as well to bear in mind that we find the meaning, or possible application, of the language that we are endeavoring to interpret ambiguous and doubtful; that the concession is made (though the fact is apparent enough without it) that the instru-

ment, or statute, containing the language was 'promoted,' and, as we believe, prepared, by the defendant; that the language in question is here invoked as importing a donation, release, or gratuity, prejudicial to the State and advantageous to the promoter; and that the rule in such cases is that, where two or more interpretations are possible, that one should be adopted which is most favorable to the party who did not create the ambiguity, or doubt, and as against whom the donation, release or gratuity is sought to be enforced; which rule, as it appears to us, is particularly applicable in this case, for the reason that a private corporation that can obtain the passage of a statute purporting to confer on it the power to impose fines upon ordinary citizens for violations of its rules, to be collected whenever a Judge of competent jurisdiction is found, must be presumed to have been able to obtain all that it wanted, and is not entitled to get anything by implication or upon a doubtful construction of its grant."

We respectfully submit that the language thus used by the Supreme Court is exceedingly apt and appropriate, and an affirmation of the same rule which has been recognized by this Court in cases coming before it. For instance, in the case of *Stein vs. Bienville Water Supply Company*, 141 U. S., where the State had incorporated the Bienville Water Supply Company and had conferred upon it the right to supply water to the Port of Mobile, and where doubt arose as to the meaning of its contract rights, this Court said:

"If the contract under which the plaintiff claims was doubtful in its meaning, the result would not be different; for, while it is the duty of the Courts not to defeat the intention of parties to a contract by a strained interpretation of the words employed by

them, it is a settled rule of construction that 'in grants by the public nothing passes by implication'; and 'if, on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the State, and where it is susceptible of two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the State.' (Page 80.)

And in *Blair vs. Chicago*, 201 U. S. 471, this Court said, when referring to the rule of construction to be applied when dealing with public grants, which it declared should be couched in language not only plain, but certain and definite in their nature, and free from ambiguity:

"It is a matter of common knowledge that grants of this character are usually prepared by those interested in them and submitted to the Legislatures with a view to obtain from such bodies the most liberal grant of privileges which they are willing to give. This is one, among many, reasons why they are to be strictly construed."

And this Court again had occasion to lay down practically the same rule in the case of *City of Cleveland vs. Cleveland Electric Railway Company*, 204 U. S. 116, where the Court says:

"Grants of franchises are usually prepared by those interested in them and submitted to the Legislatures with a view to obtain the most liberal grant obtainable, and for this and other reasons such grants should be in plain language, certain, definite in nature, and contain no ambiguity in their terms, and will be strictly construed against the grantee."

And in the *Maxwell Land Grant* case, 121 U. S. 325, this Court, quoting approvingly *Slidell vs. Grandjean*, 111 U. S. 412, 437, says:

"It is also a familiar rule of construction that, where a statute operates as a grant of public property to an individual or the relinquishment of a public interest, and there is doubt as to the meaning of its terms, or as to its general purpose, that construction should be adopted which will support the claim of the Government rather than that of the individual. **Nothing can be inferred against the State.**"

And in *Dubuque & Pacific R. R. vs. Litchfield*, 23 How. 66, 88, it is laid down, with reference to a land grant, that:

"All grants of this description are strictly construed against the grantees; nothing passes but what is conveyed **in clear and explicit language.**"

It is respectfully submitted, that the Supreme Court of Louisiana has correctly construed these statutes, and we earnestly ask for the affirmance of the judgment.

RUFFIN G. PLEASANT,

Attorney-General of Louisiana,

For Defendant in Error.

DANIEL WENDLING,

Of Counsel.

APPENDIX.

ACT 160 OF THE GENERAL ASSEMBLY OF THE STATE OF LOUISIANA OF THE YEAR 1857 (ACTS OF 1857, P. 143).

No. 160. AN ACT

To Incorporate the Carondelet Canal and Navigation Company of New Orleans.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That Wm. C. C. Claiborne, L. F. Génères, R. M. Davis, George Urquhart, W. W. Montgomery, R. Gardère, Henry St. Paul, Walter Nicol, P. H. Monsseaux, and all other persons who may associate with them by subscribing to the stock thereof, be and they are hereby created a body politic and corporate, and shall be designated and known by the name and style of the "Carondelet Canal and Navigation Company of New Orleans," and by such name and style shall sue and be sued, purchase, hold, sell, convey, contract, lease and release, grant, transfer and receive, and may do all things requisite and necessary for the purposes and objects hereinafter mentioned and set forth, and may perform all other acts, and shall exercise and enjoy all rights and privileges incident to similar corporations; they may make, adopt and use a common seal, which they may alter or renew at pleasure; they may make, ordain and publish by-laws, rules and regulations for the government of the corporation and the administration of the affairs thereof, not

The Carondelet Canal and Navigation Co. of New Orleans, incorporated.

Capital stock.

Subscription there- inconsistent with the provisions of this Act; the
to. domicile of said corporation shall be in the city of
New Orleans.

SEC. 2. *Be it further enacted, &c.,* That the capital stock of the said corporation shall not exceed five hundred thousand dollars, divided into shares of one hundred dollars each, which shall be subscribed and paid in the manner provided by the Board of Directors; provided, that at least five dollars per share shall be paid in by each subscriber at the time of subscribing.

Power of com- SEC. 3. *Be it further enacted, &c.,* That this
pany. corporation shall have the right, power, and authority to enter upon and take possession and control of the Canal Carondelet and Bayou St. John, for the purpose of completing the works of improvement thereon, undertaken and commenced by the "New Orleans Canal and Navigation Company," in pursuance of the provisions of the Act of the Legislature of the State of Louisiana, entitled "An Act relative to the Orleans Navigation Company, the Bayou St. John and Canal Carondelet, approved March 12th, 1852; provided, however, that the said New Orleans Canal and Navigation Company shall not be affected by anything in this Act contained, in case the said company shall do and perform all things required to be done and performed by said Act above mentioned, in the manner and within the time prescribed in and by said Act; and provided, further, that in the event of the said New Orleans Canal and Navigation Company, failing to perform the requirements of said Act, in the manner and within the time therein expressed and contemplated, the corporation hereby created shall, upon taking possession of the said Canal Carondelet and Bayou St. John for the purposes contemplated in this Act, ar-

Proviso.

Proviso.

range, adjust, and liquidate the claims of the creditors of the said New Orleans Canal and Navigation Company, and of the stockholders in said company, for moneys expended by them in and about the works and affairs of said company, connected with the said Canal Carondelet and Bayou St. John, in the manner hereinafter expressed and provided; further, that the corporation hereby created may depart from the plan of the improvement of said Canal and Bayou, to which reference is made in said Act, designated as "Harrison's plan," so far as said plan proposes a basin at the junction of said Canal with said Bayou, and construction of a breakwater at the mouth of said Bayou at Lake Pontchartrain, in case a majority of the Board of Directors should determine that such works are not demanded by the interests, safety or convenience of commerce.

Proviso.

SEC. 4. *Be it further enacted, &c.,* That in the event of the failure of the said New Orleans Canal and Navigation Company to have ready and fully completed by the time required by law, all and every one of the improvements contemplated by the Act aforesaid of March 12th, 1852, and specified in the plan known as "Harrison's plan," and the consequent forfeiture of the charter, franchises and privileges of said New Orleans Canal and Navigation Company, (which forfeiture, sued for in the name of the State, shall be tried in preference over all other cases by any of the District Courts of New Orleans, and also on appeal by the Supreme Court; and during the pending whereof, the said New Orleans Canal and Navigation Company shall be prevented from collecting any tolls or dues whatever,) the property of said company, real and personal or mixed, including the interest in the Canal Carondelet and Bayou St.

Proceedings in case of forfeiture.

John and the works and improvements done and effected thereon, and all machinery, boats, tools, implements and materials of whatsoever description necessary to be used in carrying on the works of the company, and real estate, acquired up to the present time, buildings and other property of said company in the city of New Orleans, shall be appraised at the true value thereof, by a Board of four Appraisers duly sworn and appointed as follows: two by the hereby appointed commissioners, their successors or a majority of them, and two by the New Orleans Canal and Navigation Company; and in case said appraisers should not agree upon the value of said property, then any two of them may apply by motion in open court to the Judge of the Fourth District Court of New Orleans, and said Judge shall forthwith appoint an umpire; and said appraisers, or a majority of them, shall make a due report of their appraisal, and said report shall be final and conclusive as soon as duly filed by them in the office of the Commissioners appointed by the present Act.

Debts, how paid

SEC. 5. *Be it further enacted, &c.,* That upon the return of the report of said experts, the actual and bona fide debtors of the said New Orleans Canal and Navigation Company shall be ascertained, and an amount of stock in this corporation at par value equal to the amount of such debt in the aggregate, shall be set apart and appropriated to the holder or holders of said debts, who may, at their option, receive the amount of their claims, respectively, in stock at the par value thereof, or in cash. The excess of the appraised value of the property of the said New Orleans Canal and Navigation Company, after providing for the payment of the debts of said company as aforesaid, shall be accounted for in the stock of the new cor-

Excess of value
of property, how
disposed of.

poration at its par value, to be issued to the holders of the stock in the said New Orleans Canal and Navigation Company, pro rata, according to the amount which each of said stockholders has actually paid on the amount of stock held by him in the New Orleans Canal and Navigation Company; provided, that inasmuch as the said New Orleans Canal and Navigation Company has issued to Edward H. Durell and James Currie, five hundred shares of stock which by contract was to be unassessable for the works and improvements undertaken by said company, and has also, in pursuance of an amendment of the charter of said company, adopted November 25th, 1854, according to law, created and set apart a portion of stock to which preference has been given, the holders of said unassessable stock shall receive one-tenth part of said surplus, after providing for the debts of said company in the manner aforesaid, and the holders of said preferred stock shall receive eighty dollars per share, to be provided pro rata; the remainder of said stock shall be divided pro rata amongst the holders of the ordinary stock of said company.

Provided.

SEC. 6. *Be it further enacted, &c.,* That the remainder of the stock of this corporation, after the appropriation and disposition mentioned in the next preceding section, shall be open to subscription. Books for subscription to the stock of this corporation shall be open in the office of this corporation, at such times and under such regulations as the commissioners herein named shall prescribe, until the whole amount of said stock shall have been subscribed.

Books of subscription.

SEC. 7. *Be it further enacted, &c.,* That Wm. C. C. Claiborne, L. F. Génères, R. M. Davis, George Urquhart, W. W. Montgomery, R. Gardère, H.

Board of Commissioners, their duties

St. Paul, Walter Nicol and P. H. Monsseaux, shall be and they are hereby constituted a Board of Commissioners, whose duty it shall be to take charge of the property and effects of the said New Orleans Canal and Navigation Company, immediately upon the forfeiture of the rights and franchises of said company, in pursuance of the said Act of March 12th, 1852, to receive the report of the said experts, to arrange and adjust the claims of the creditors and stockholders of said company in accordance with the provisions of section fifth of this Act, to open books for subscription to the stock of this corporation and receive such subscriptions, and close the same when the whole amount of said stock shall have been subscribed, and to do all things necessary for the proper organization of this company. They shall also constitute and be clothed with all the powers of a Board of Directors of this corporation, and shall hold office and exercise the functions of such Board until the third Monday of January, eighteen hundred and fifty-nine, unless sooner removed, or they or either of them shall vacate said office, and until their successors shall have been duly elected as provided in this Act. A majority of the Board of Directors shall constitute a quorum.

Said Commissioners to be clothed with the powers of a Board of Directors, until a certain time.

Quorum.

Election of Board of Directors.

SEC. 8. *Be it further enacted, &c.,* That the business of this corporation shall be conducted by a Board of Directors, nine in number, who shall be stockholders. They shall, immediately after their election, chose one of their number President, who shall be styled and recognized as President of the company. The Commissioners herein named, who shall constitute the first Board of Directors, as in the next preceding section provided, shall elect one of their number President. The election of the Directors shall be held annually by

the stockholders, on the third Monday in January. The first election of Directors shall take place on the third Monday in January, eighteen hundred and fifty-nine; at all elections of Directors, and at all other meetings of stockholders, each share of stock shall be entitled to one vote. The votes in all cases may be cast by the stockholders in person or by proxy.

SEC. 9. *Be it further enacted, &c.,* That the Commissioners named in section eighth of this Act, shall, as soon as practicable after the organization of this corporation, make, ordain and publish a system of by-laws, rules and regulations for the government of this corporation and the administration of the affairs thereof. They shall, in such by-laws, designate the time of holding meetings of the Directors and of the stockholders, and the manner in which notice of stockholders' meetings shall be given: provided, meetings of the Board of Directors shall be held at least once in every month, and stockholders' meetings shall be held at least annually, on and after the third Monday in January, eighteen hundred and fifty-nine: provided further, that notice of every special or called meeting of the stockholders shall be published in at least one newspaper published in the city of New Orleans, for four consecutive weeks, at least once in each week next preceding the time named for such meeting.

By-laws to be adopted.

Meetings of Directors and Stockholders.

Notice for called meetings.

SEC. 10. *Be it further enacted, &c.,* That this corporation may and can take and receive, possess, hold and enjoy, all and singular the rights, privileges, franchises, immunities, powers and authority which were at any time granted to, received, possessed, enjoyed and exercised by the late "Orleans Navigation Company," under sections nine, ten, eleven, twelve and thirteen, of an

Privileges of Corporations.

Certain compromise authorized.

Company authorized to mortgage the canal and other property.

Exemption from taxation.

Powers and privileges of company.

Proviso.

Act entitled "an Act for the improving the Inland Navigation of the Territory of Orleans," approved July third, one thousand eight hundred and fifty, as well as those exercised and enjoyed at this time by the said New Orleans Canal and Navigation Company, by Act approved March twelfth, one thousand eight hundred and fifty-two; and the said Commissioners shall also have the power to enter into any compromise with the New Orleans Canal and Navigation Company, by which said New Orleans Canal and Navigation Company may agree to transfer, previous to the time at which their charter might incur forfeiture, all their rights and privileges; and said company shall further have the right to mortgage the said canal, and any work or property by them possessed, and issue bonds to that effect; shall be exempted from municipal taxation for three years after the passage of this Act on the said Canal and Bayou St. John, and shall in fine be invested with all and singular such other and further rights, privileges, franchises, immunities and powers, as are incident to corporations organized under the laws of this State, and which necessarily and lawfully arise, result and accrue to the corporation hereby created for the purposes expressed and contemplated in and by this Act: provided, that this corporation shall assume all and singular, the obligations, duties and responsibilities assumed by, and imposed upon the New Orleans Canal and Navigation Company, in pursuance of the Act of the Legislature, approved March twelfth, one thousand eight hundred and fifty-two, entitled "an Act relative to the Orleans Navigation Company, the Bayou St. John, and Canal Carondelet," except in so far as the provisions of said Act are modified or changed in and by this Act.

SEC. 11. *Be it further enacted, &c.,* That in the event that any one or more of the Commissioners in this Act named, shall refuse to act, or shall from any cause be prevented from performing the duties herein required of said Commissioners, it shall be the duty of the remaining of said Commissioners to supply such vacancy or vacancies. A failure to elect Directors shall not dissolve the corporation, but the Board in office shall continue to exercise its functions until a new Board shall be elected, and any vacancy in the Board of Directors occurring in the interval between elections, may be filled by the Board in office for the time being.

Vacancy among
Commissioners, how
filled.

Directors to con-
tinue in office until
their successors are
chosen.

Vacancy in Board
of Directors, how
filled.

SEC. 12. *Be it further enacted, &c.,* That in case of failure on the part of any subscriber to pay the instalments on his stock as may be required, the Board of Directors shall have the option, after thirty days notice to the defaulter, of declaring his stock forfeited, and selling it for the benefit of the company, or compelling by suit the payment of such instalments; and no stockholder shall be permitted to vote on any question whilst in default.

Relative to de-
faulting stockhold-
ers.

SEC. 13. *Be it further enacted, &c.,* That all meetings of stockholders called for the purpose of increasing or diminishing the capital stock of the company, or for borrowing money upon the Bonds of the company, shall be composed of persons holding in their own right, or as agents for others, at least two-thirds of the stock of the company, in order to take valid and binding action in the premises. At all other meetings of stockholders, and at all elections, a majority of the capital stock of the company shall be represented; and in the latter case, if such majority be not present nor represented, the meeting shall be ad-

Quorum of stock-
holders.

journed for ten days, and the vote of the majority of the stock presented and represented at such adjourned meeting, shall bind the company in the same manner as if a majority of all the stock were present and represented.

Powers and duties of the President and Directors.

SEC. 14. *Be it further enacted, &c.,* That the President and Directors of the said corporation shall have power to make and use a common seal, and to do everything necessary for the construction, repair and maintenance of the improvements of the navigation of the canal and bayou hereinbefore described, as well as for the construction of docks, wharves, and other improvements deemed necessary, and for the purpose of speedily and properly making said improvements, to purchase all machines, and other equipments deemed by them necessary or useful to the purposes of the company; to appoint a Secretary, Attorney, Treasurer, Superintendent, and other officers and servants necessary or proper for the faithful performance of any duty necessary to the proper maintenance of the said improvements; to fix the rate of tolls thereon; to make rules and regulations and other by-laws deemed necessary for the proper, safe and regular transaction of the business of the company. But such rules and regulations shall be subject to repeal or amendment by a majority of the stockholders, at their meetings, or by the President and Directors in the interval. They shall declare the dividends arising from said improvements, after payment of all necessary expenses, and they shall keep, or cause to be kept, a regular set of books, in which shall be entered all the business transactions of the company.

Stock books.

SEC. 15. *Be it further enacted, &c.,* That stock books shall be kept at the office of the company;

certificates of stock shall be issued to the shareholders, and no transfer of stock shall be binding on the company until made in its stock book. No transfer of stock shall exempt the party transferring it from the obligation of paying instalments previously called for, and no stockholder shall be permitted to vote at any meeting of the stockholders unless he become a stockholder on the books of the company at least thirty days previous to such meeting. Scrips shall be issued to each subscriber to stock, which shall indicate the number of shares subscribed and the amount paid on each share, at each instalment, and in case the whole number of shares subscribed for by any subscriber shall not be required to be paid, to the full amount of one hundred dollars for each share, such subscriber shall only be entitled to receive a certificate of stock for the number of shares for which he shall have actually paid, at the rate of one hundred dollars each.

Transfer of stock.

Scrip to be issued to subscribers.

Certificate of stock to be furnished stockholders.

SEC. 16. *Be it further enacted, &c.,* That dividends of the profits accruing to the company shall be declared by the directors, at such times as they may determine, payable at New Orleans; provided that if the condition of the affairs of the company will admit, such dividend shall be declared at least once in each year.

Dividends.

SEC. 17. *Be it further enacted, &c.,* That no money shall be borrowed by the said company, unless authorized by a vote of two-thirds of the stock represented, at a meeting regularly called of the stockholders. But the Board of Directors may contract for the purchase of land, machinery, materials, and other necessary supplies, or labor, on such terms as they may deem proper.

Power to borrow money.

Directors may make certain contracts.

SEC. 18. *Be it further enacted, &c.,* That at the annual meeting of the stockholders, on the third Monday in January, statements of the financial and other affairs of the company shall be laid

Statement to be laid before the annual meeting of the stockholders.

How meetings of stockholders and directors may be called.

before the meeting by the President and Directors then in office. The President and Directors may call other meetings when they may think proper, and it shall be their duty at any time, on the requisition in writing of stockholders representing one-fifth of the stock of the company, to call a meeting of the stockholders, to take into consideration any matters affecting the interest of the company.

Forfeiture in case certain works are not completed within a certain time.

SEC. 19. *Be it further enacted, &c.,* That this corporation shall be and they are hereby required to complete the works prescribed in and by the Act entitled "An Act relative to the Orleans Navigation Company, the Bayou St. John and Canal Carondelet," approved March 12th, 1852, within three years from and after the 17th day of October next (1857), subject, however, to the modifications of said Act herein contained, and in the event that this corporation shall fail to complete said work in the manner aforesaid, and within the time mentioned in this section, the entire property, with all the improvements and ameliorations thereon, franchises, rights, privileges and immunities granted in and by this Act shall cease, determine and be forfeited to and become the property of the State of Louisiana.

Duration of corporation.

SEC. 20. *Be it further enacted, &c.,* That this corporation shall have existence for and during the term of twenty-five years from and after the 17th day of October next; provided that the State of Louisiana shall have the right to take possession of said Canal Carondelet and Bayou St. John, and all the property and improvements connected therewith, at the expiration of the term above mentioned, should the Legislature determine so to do, upon paying to this corporation the value of said property, to be appraised by five competent persons, as experts, two to be appointed by this

In what manner the State may take possession of said canal and bayou.

corporation and two by the Governor, and the four thus appointed shall appoint a fifth; said experts shall be required to take an oath to discharge their duty faithfully. In the event that the State shall not determine to take possession of said property, as herein provided, then this corporation shall be in existence for twenty-five years from and after the expiration of the term in this section mentioned aforesaid, and at the end of such second term of twenty-five years, the said property may still become absolutely the property of the State of Louisiana, and no compensation required to be made to this corporation.

In case the State should not take possession, charter extended.

At what time the said property shall become the property of the State.

SEC. 21. *Be it further enacted, &c.,* That at the expiration of the charter, or whenever the dissolution of the corporation shall render necessary its liquidation, three Commissioners shall be elected by the stockholders, at a meeting convened for that purpose, whose duty it shall be to take possession of the property of the company, and conduct its business to a final liquidation, on such terms and in such manner as shall then be determined.

Commissioners to liquidate affairs of the corporation.

SEC. 22. *Be it further enacted, &c.,* That the Attorney General is hereby required, in case the New Orleans Canal and Navigation Company should not, by the 17th day of October, 1857, have fully complied with the fourth section of this bill, to institute proceedings for the forfeiture of their charter, if required to do so by a majority of the commissioners appointed by this Act.

Duty of Attorney General.

WM. W. PUGH,

Speaker of the House of Representatives.

C. H. MOUTON,

Lieutenant Governor and President of the Senate.

Approved March 16th, 1857,

ROBERT C. WICKLIFFE,

Governor of the State of Louisiana.

A true copy,

ANDREW S. HERRON,

Secretary of State.

**ACT 74 OF THE GENERAL ASSEMBLY OF
THE STATE OF LOUISIANA OF THE
YEAR 1858 (ACTS OF 1858, P. 46).**

No. 74.]

AN ACT

Relative to the Carondelet Canal and Navigation
Company, of New Orleans.

Company author-
ized to construct
certain works.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the Carondelet Canal and Navigation Company of New Orleans shall have the right to construct lay-outs, basins, and half-moons, for steam or any other water-crafts, at any point they may deem convenient on the Bayou St. John, the basin, and Canal Carondelet; and to extend the said lay-outs, basins, and half-moons, on any part or portion of the road, streets, or neutral grounds through which run their navigable waters; Provided, they shall furnish the public with the roads required by law, along and around said lay-outs, basins, and half-moons, of the width as existing at the time of such extension; and keep the same, subject to the ordinances of the Common Council of New Orleans.*

Proviso.

Company author-
ized to construct a
railroad.

SEC. 2. *Be it further enacted, &c., That the said Company shall have the right to construct a railroad, with single or double track, on either side of their basin, canal, and the Bayou St. John, from the head of the said basin, on Toulouse Street, to the lake end, with the privilege of passing through such private property and lands as may be needed, upon due compensation made to the owners thereof, in conformity with existing laws; and they shall be authorized to transport,*

on said road, freight and passengers for hire; *Provided*, They shall not employ steam locomotives on said road, within such limits of the city as the Common Council of New Orleans may prescribe; and that the said road shall be subject to such general police regulations as are now or may hereafter be adopted by said Council.

Proviso.

SEC. 3. *Be it further enacted, &c.,* That after the expiration of five years from the passage of this act, the city corporation shall be prohibited from draining into Bayou St. John; and should said city continue to drain into said bayou after the expiration of the term aforesaid, then, only, upon due indemnity being made for any injury which shall be made to appear to result therefrom; said indemnity to be determined by three experts, to be appointed—one by the city corporation, one by the Company, and one by any of the District Judges of New Orleans. And the city corporation shall further have the right to build bridges over said canal and bayou, at distances not less than every five squares; *And provided further*, That the bridges now existing opposite Marais and Claiborne streets shall not be affected by this clause, but must be so constructed as not to prevent the free ingress and egress of vessels.

Prohibition against draining into Bayou St. John.

Indemnity—damage how ascertained.

Right of the city corporation to build bridges over canal and bayou.

SEC. 4. *Be it further enacted, &c.,* That the said Company shall enjoy corporate succession during fifty years from this date; after which time it may revert to the State, upon due compensation being made according to award, by three commissioners, one appointed by the Governor of the State, one by the Company, and the third by any Court of Record of New Orleans.

Corporate succession during fifty years, when the same may revert to the State.

SEC. 5. *Be it further enacted, &c.,* That the said Company shall have the sole and exclusive

Right to grant special privileges.

right to grant the special privilege of towing vessels, schooners, or rafts on their waters, for any length of time they may deem proper.

Exclusive powers granted.

SEC. 6. *Be it further enacted, &c.,* That the said Company shall have exclusive power to follow and carry out their works in conformity with such plan or plans as they may at any time adopt, and deem best calculated to forward the interests of commerce; *Provided,* That this section shall not authorize the said Company to use or interfere with any of the streets or highways of the city, without the consent of the Common Council of the city of New Orleans.

Proviso.

Power to impose fines.

SEC. 7. *Be it further enacted, &c.,* That the Directors of the Company shall have the right to impose fines, not exceeding fifty dollars, for each and every daily violation of their rules and ordinances, recoverable before any judge of competent jurisdiction.

Power to issue bonds secured by mortgage.

SEC. 8. *Be it further enacted, &c.,* That a majority of two-thirds of the Board of Directors, with the consent of two-thirds of the stockholders, shall have power to issue the bonds of the corporation, bearing any interest not exceeding twelve per cent. per annum, and the capital payable in instalments from one to thirty years, according to the directions of the Board; and for the security of the said bonds, said Company is hereby authorized to specially effect, hypothecate, and mortgage all its property, privileges, and immunities whatever; *Provided, however,* That the amount of bonds thus issued shall never exceed two hundred and fifty thousand dollars, and shall be exclusively employed in the improvement of their navigation, and in the building of the railroad herein before authorized.

SEC. 9. *Be it further enacted, &c.,* That said canal and railroad shall be exempted from taxation, during the period of fifty years. Exemption from taxation

SEC. 10. *Be it further enacted, &c.,* That this act shall be in force from and after its passage. When this act takes effect.

WM. W. PUGH,

Speaker of the House of Representatives.

WM. F. GRIFFIN,

President pro tem. of the Senate.

Approved March 10th, 1858.

United States Supreme Court

OCTOBER TERM, 1912.

No. 78.

U. S. Supreme Court, U. S.

FILED

MAR 16 1913

JAMES D. MAHER

CLERK

CARONDELET CANAL AND NAVIGATION
COMPANY,

Plaintiff in Error,

versus

THE STATE OF LOUISIANA,

Defendant in Error.

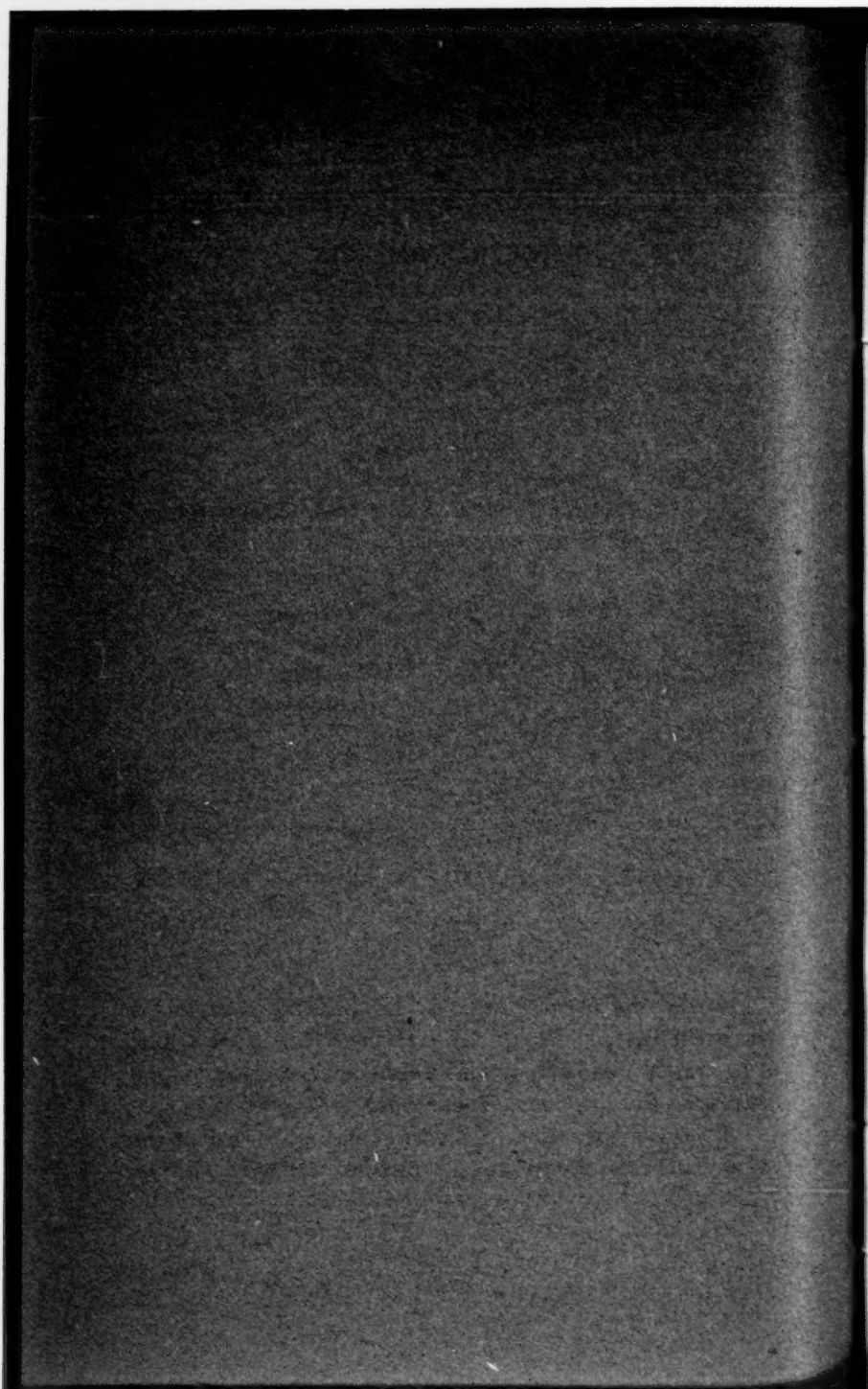
SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

EDGAR H. FARRAR,

BENJ. T. WALDO,

WM. C. DUFOUR,

Counsel for Plaintiff in Error.



United States Supreme Court.

OCTOBER TERM, 1913.

No. 78.

CARONDELET CANAL AND NAVIGATION
COMPANY,

Plaintiff in Error,

versus

THE STATE OF LOUISIANA,

Defendant in Error.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

I.

In the original brief filed by the plaintiff in error the discussion was confined strictly to the merits of the case, and, as no motion was made to dismiss the writ of error, we did not discuss the question as to our right to the writ.

It is now suggested in the brief filed in behalf of the State that this Court should dismiss the writ on two

grounds—*first*, because the judgment of the Supreme Court of Louisiana is not final; and, *second*, because there is no Federal question raised on the record.

FIRST. The judgment of the Supreme Court is final in form and in substance, as it decides the right to the property in contest, and directs it to be delivered up by the defendant to the State, the plaintiff in the action, and the plaintiff is entitled to have such decree carried immediately into effect. There is no Federal question, and no undisposed of right or title on the reservations made in the decree to dispose of which the cause is remanded. The Court below would be compelled to execute immediately the judgment of the Supreme Court, to eject the defendant from all of the rights and property which it claims, and in support of which claims it urges the Federal rights. The Court below has no power except to hear and determine the matters reserved. The matters reserved are merely incidental to the main decree on question of title. The question of title is finally adjudged.

The decree on rehearing is:

"It is ordered that the decree heretofore handed down in this cause be recast and made the *final decree* of the Court as follows—to wit:

"It is, therefore, ordered that the judgment appealed from be annulled, avoided and reversed, and that there now be judgment in favor of plaintiff, the State of Louisiana, and against the defendant * * * *ordering the delivery* by said liquidators to the State of Louisiana of the waterway known as the Carondelet Canal and Bayou St. John and Old Basin, *in its entirety*, as it stood on March 10, 1908, together with ALL THE PROPERTY and IMPROVEMENTS APPURTENANT thereto, including the roadway or roadways upon the side or sides of said waterway."

This main clause, or first part of the decree, adjudges to the State and orders the defendants to deliver three things: (1) the waterway; (2) all *property* appurtenant thereto; (3) all *improvements* appurtenant thereto, inclusive of the roadways. There being no inventory or description in the record of the property and improvements appurtenant to the waterway, the Court could not, and did not, describe or indicate them, or any of them, except the roadways.

The decree proceeds:

"It is further ordered that whatever claims the State or the defendant may have to the triangular strip of ground described in the petition, or to the proceeds thereof, or to any other property, movable or immovable, NOT APPURTENANT to said waterway and roadways, are hereby reserved for further adjudication in this proceeding, with leave to the parties to amend their pleadings."

This second clause of the decree simply leaves open the question as to what is and what is not appurtenant to the waterway and roads. Everything which may be appurtenant to the waterway and roads is already adjudged to be delivered to the State. The question as to whether this, that or the other is *property* or an *improvement* appurtenant in its nature to the waterway or the roadways, is a mere matter of detail incident to the execution of the decree. The disputed triangle itself is one of the details. If it is appurtenant, it goes to the State. If it is not appurtenant, it goes to defendant. The Court could not determine in this case whether it was appurtenant or not, and left that question of fact open.

The decree proceeds:

"It is further ordered that said defendant and said liquidators render an accounting showing their receipts and disbursements in the management of said property since March 10, 1908."

This third clause of the decree is the mere necessary incident and result of adjudging the question of title. The claim of the State having been denied in the lower court, its incidental claim for an accounting was denied also, and the Supreme Court having adjudged the State entitled to take possession of, or in some sense to recover the property from the defendant, and having ordered the defendant to deliver possession of all the property claimed by the State in the possession of the defendant, the State was further entitled to a decree for rents and revenues as a mere incident of the final decree in its favor on the main questions.

The decree proceeds:

"It is further ordered that this cause be remanded to the District Court for further proceedings *on all questions reserved as above stated*, and that the right of the plaintiff to obtain judgment for such an amount as may be found due upon defendant's accounting, and to take such further proceedings and obtain such farther orders as may be required for the execution of this judgment be reserved. It is further ordered that defendant pay all costs."

None of the matters reserved affect the obligation of defendant to deliver up to plaintiff what it claims to be its own property and property rights, protected from the State's action by the Constitution of the United States. On

that question of Federal right it is entitled to the judgment of this Court, and it is entitled to suspend the execution of the decree, which ousts it of possession and control of these rights, until the judgment of this Court can be obtained.

If the defendant cannot take its writ of error to this court in this case at this stage of the case, at what stage of the case can it take such writ? If this case is permitted under this decree to go back to the District Court of Louisiana, in which it originated, what will there take place? A writ will immediately issue putting the State officers in possession and control of the Basin, Canal and Bayou St. John, the roadways on the side, and all the "*property and improvements appurtenant thereto.*" The Court would then proceed to determine whether the triangle, or its proceeds in dispute, is appurtenant to the canal, basin and bayou, and, if it so finds, a writ will issue putting the State in possession. The defendant will be called on to file an account of its gestion of the property and a judgment will be entered against it for the net amount of such revenues.

No Federal question now in the record would be applicable to these incidental questions.

After the case goes back to the lower court on the reserved matters, and the writ of possession has issued and the defendant is ousted of its property, the State may abandon its claim for an accounting, and abandon also its claim for the triangle. How could the defendant then protect itself?

To hold that the defendant cannot at this stage of the case prosecute its writ of error to this Court would wholly defeat the appellate jurisdiction of this Court under the Constitution and laws of the United States.

This case is controlled by the doctrine of *Forgay vs. Conrad*, 6 Howard, 201. In that case the decree declared

that certain deeds should be set aside as fraudulent; that certain lands and slaves should be delivered up to the complainant; that one of the defendants should pay a certain sum of money; that the complainant should have execution for these several matters; that the Master should take an account of the profits of the land and slaves, and also an account of certain money and notes; that so much of the bill as contains or relates to matters referred to the Master for report is retained for further decree in the premises, etc.

The Court held that this was a final decree, saying:

"In the case of *Whiting vs. The Bank of the United States*, 13 Peters, 15, it was held that a decree of foreclosure and sale of mortgaged premises was a final decree, and the defendant entitled to his appeal without waiting for the return and confirmation of the sale by a decretal order. And this decision is placed by the Court upon the ground that the decree of foreclosure and sale was final upon the merits, and the ulterior proceedings but a mode of executing the original decree. The same rule of construction was acted on in the case of *Michaud and Others vs. Girod and Others*, 4 Howard, 503.

"The case before us is a stronger one for an appeal than the case last mentioned. For here the decree not only decides the title to the property in dispute, and annuls the deeds under which the defendants claim, but also directs the property in dispute to be delivered to the complainant, and awards execution. And according to the last paragraph in the decree, the bill is retained merely for the purpose of adjusting the accounts referred to the Master. In all other respects, the whole of the matters brought into controversy by the bill are finally disposed of as to all of the defendants, and the bill as to them is no longer pending before the Court, and the decree which

it passed could not have been afterwards reconsidered or modified in relation to the matters decided, except upon a petition for a rehearing, within the time prescribed by the rules of this Court regulating proceedings in equity in the Circuit Courts. If these appellants, therefore, must wait until the accounts are reported by the Master and confirmed by the Court, they will be subjected to irreparable injury. For the lands and slaves which they claim will be taken out of their possession and sold, and the proceeds distributed among the creditors of the bankrupt, before they can have an opportunity of being heard in this court in defense of their rights. We think, upon sound principles of construction, as well as upon the authority of the cases referred to, that such is not the meaning of the acts of Congress. *And when the decree decides the right to the property in contest, and directs it to be delivered up by the defendant to the complainant, or directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one to that extent, and authorizes an appeal to this Court, although so much of the bill is retained in the Circuit Court as is necessary for the purpose of adjusting by a further decree the accounts between the parties pursuant to the decree passed."*

This rule has been recognized and applied many times in this Court, as appears by the following cases:

Thompson vs. Dean, 7 Wall. 342 (at p. 346);
French vs. Shoemaker, 12 Wall. 86 (at p. 98); *Bostwick vs. Brinkerhoff*, 106 U. S. 3;
Grant vs. Phoenix Co., 106 U. S. 429; *Winthrop Iron Co. vs. Meeker*, 109 U. S. 180;

St. Louis Ry. vs. Southern Ex. Co., 108 U. S. 24 (at p. 28) ; *M., K. & T. R. R. vs. Dinsmore*, 108 U. S. 30; *Keystone Iron Co. vs. Martin*, 132 U. S. 91; *Lewisburg Bank vs. Scheffey*, 140 U. S. at p. 452.

SECOND. The Federal questions involved, and the defenses of the defendant based on the claim that the act of 1906 impairs the obligations of its contract as expressed in its charter from the State, and that both said act and the judgment of the Court enforcing it take the defendant's property without due process of law, are set up in the answer. These Federal questions were set up in oral argument and in the briefs on the merits. They were set up again in the application for a rehearing. The Federal questions raised by the defendant were insisted upon at every stage of the proceedings.

The fact that the State Court did not pass on the Federal rights specially set up of record does not eliminate those questions from the case. This Court will decide the Federal questions if the necessary effect of the judgment of the State Court is to deny the Federal right so set up, and which, if recognized and enforced, would require a different judgment.

C. B. & Q. Railroad vs. Drainage Commission,
200 U. S. 561.

As shown in our original brief, this Court will find for itself, irrespective of the judgment of the State Court, what our contract rights were which we claim were violated by the act of 1906, and what our property rights were which we claim were taken for public purposes without compensation, and, therefore, without due process of law,

in violation of the Fourteenth Amendment to the Constitution of the United States.

II.

In view of the decisions of this Court in *Chicago, Burlington, etc., Railroad vs. Chicago*, 166 U. S. 226; *Fayerweather vs. Rich*, 195 U. S. 276, and *Union Transit Co. vs. Kentucky*, 199 U. S. 202, we do not deem it necessary to discuss in detail the proposition that the judgment of a State Court, even if it be authorized by a statute, whereby private property is taken for the State, or under its direction, for public use, ^{it is a public use} is upon principle and authority wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the United States. The same principle applies to a statute of a State.

If the State had no property rights in the property and improvements bought and constructed with the money of the defendant and its predecessors in title, then the act of 1906, which directed the officials appointed by the Governor to take possession of and administer the said property without compensation, is void, and the judgment of the Supreme Court, in substantially enforcing said statute, was equally void.

If the Supreme Court of Louisiana, irrespective of said statute, ordered the defendant to deliver up said property to the State without compensation, it is also void.

In considering these questions, this Court will regard substance and not form. Escape cannot be had by the State Court holding arbitrarily that the property taken for public purposes did not belong to the claimant. If there should be a substantial controversy between the

State and the claimant as to whether the property taken without compensation belonged to the State or the claimant, and the State Court should resolve that controversy in favor of the State, then it might be well said that the decision of the State Court was wrong, and this Court would not review it. But in this case the State had no claim of title, or color of title, to the property ordered to be delivered up without compensation.

Respectfully submitted,

EDGAR H. FARRAR,

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WM. C. DUFOUR,

Counsel for Plaintiff in Error.

CARONDELET CANAL AND NAVIGATION COMPANY *v.* STATE OF LOUISIANA.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 78. Argued March 16, 17, 1914.—Decided April 20, 1914.

As the judgment of the state court disposed of, and ordered the delivery of the property sued for, and in so doing disposed of the Federal defense interposed, it has substantial finality on which to base the writ of error, notwithstanding a reservation as to some property not appurtenant and provision for an accounting as to certain disbursements.

If the further proceedings in the court below apply only to questions reserved, so that the decree can be immediately executed as to the property involved, and as to that it is final, the judgment is final in form as well as in substance, and a writ of error properly lies from this court.

The fact that the Supreme Court of the State did not refer to a statute claimed to have impaired the rights of plaintiff in error, does not prevent this court from considering that statute, and if it was an essential, although an unmentioned, element of the decision, it is a basis for the Federal question set up.

Bad motives need not be imputed to a legislature in order to render a statute unconstitutional under the contract clause; it is not the motive causing the enactment, but the effect thereof on contract rights, which determines the question of constitutionality.

The repeal of a law which constitutes a legislative contract is an impairment of its obligation.

The acts of 1857 and 1858 of the legislature of Louisiana did grant certain contract rights to the Carondelet Canal and Navigation Company which are within the protection of the contract clause of the Federal Constitution, and the act of 1906 repealing the act of 1858 impaired the contract obligation of the latter.

The natural and grammatical use of a relative pronoun is to put it in close relation with its antecedent, and in this case so held as to the pronoun "it," notwithstanding its use rendered the sentence somewhat ambiguous.

The provision in the act of 1858 of Louisiana, granting rights to a corporation on certain conditions, that after fifty years "it may

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revert to the State," *held* to relate to the company and not to one of the properties specified.

In construing a statute which at the time of its enactment was published in more than one language, the version in the other language is significant.

In this case, *held*, that as reversion of property to the State was contingent on compensation, the statute should be construed as making payment a condition precedent of the reversion, as it could not be intended to remit the owner to a mere claim against the State which could not be enforced as the sovereignty of the State would give immunity from suit.

129 Louisiana, 279, reversed.

THE facts, which involve the jurisdiction of this court to review judgments of the state courts and also the constitutionality under the contract clause of the Federal Constitution of a statute of Louisiana relating to the property of Carondelet Canal and Navigation Company and the right of the State to acquire its property, are stated in the opinion.

Mr. Edgar H. Farrar, with whom Mr. Benjamin T. Waldo and Mr. W. C. Dufour were on the brief, for plaintiff in error:

The judgment of the Supreme Court is final in form and in substance, as it decides the right to the property in contest, and directs it to be delivered up by the defendant to the State, the plaintiff in the action, and the plaintiff is entitled to have such decree carried immediately into effect. *Forgay v. Conrad*, 6 How. 201; *Thompson v. Dean*, 7 Wall. 342, 346; *French v. Shoemaker*, 12 Wall. 86, 98; *Bostwick v. Brinkerhoff*, 106 U. S. 3; *Grant v. Phœnix Co.*, 106 U. S. 429; *Winthrop Iron Co. v. Meeker*, 109 U. S. 180; *St. Louis Ry. v. Southern Ex. Co.*, 108 U. S. 24, 28; *M., K. & T. R. R. v. Dinsmore*, 108 U. S. 30; *Keystone Iron Co. v. Martin*, 132 U. S. 91; *Lewisburg Bank v. Scheffey*, 140 U. S. 452.

The Federal questions involved were set up in oral argu-

ment and in the briefs on the merits. They were set up again in the application for a rehearing. *C., B. & Q. R. R. v. Drainage Commission*, 200 U. S. 561.

The judgment of a state court, even if it be authorized by a statute, whereby private property is taken for the State, or under its direction, for public use, without compensation, is upon principle and authority wanting in the due process of law required by the Fourteenth Amendment. The same principle applies to a statute of a State. *Chi., B. & C. R. R. v. Chicago*, 166 U. S. 226; *Fayerweather v. Rich*, 195 U. S. 276, and *Union Transit Co. v. Kentucky*, 199 U. S. 202.

This court will determine for itself what the contract claimed to be violated was. *Douglas v. Kentucky*, 168 U. S. 502; *McGahey v. Virginia*, 135 U. S. 662; *McCullough v. Virginia*, 172 U. S. 110; *Vicksburg v. Waterworks Co.*, 202 U. S. 467.

This court will review the findings of fact by a state court where a conclusion of law as to a Federal right and the finding of fact are so intermingled as to make it necessary to analyze and dissect the facts for the purpose of passing on the Federal question. *Creswill v. Knights of Pythias*, 225 U. S. 261; *Wood v. Chesborough*, 228 U. S. 678.

The necessary corollary of these propositions is that when the claim is that claimant has been deprived of property without due process of law, this court will find for itself what the claimant's property rights were, and how he has been deprived of them.

The plaintiff in error had legislatively recognized rights upon the property adjudged to the State by the Supreme Court of Louisiana.

The State never had any proprietary interest in and to the improvements on the Canal, Basin and Bayou, and never claimed any. She could have no claim to anything but to the Canal, Bayou and Basin as they stood in 1805;

and the act of 1896, which the court has enforced, takes plaintiff in error's property in violation of the charter rights of plaintiff under the acts of 1857 and 1858. La. Civil Code, Art. 23; *Henrietta Mining Co. v. Gardiner*, 173 U. S. 123; *United States v. Tyner*, 11 Wall. 92.

The reversion provided for in § 4 of the act of 1858 was the same thing as was originally provided for in the repealed section of the act of 1857.

If what was to revert under the act of 1858 on due compensation was the same thing as what was to revert under the repealed section of the act of 1857, then the act of 1906, sued on by the State and enforced substantially by the Supreme Court of Louisiana, impaired the obligation of the contract between the State and the plaintiff in error, because that act made no provision for compensation to the plaintiff in error.

If what was to revert, on due compensation made, expressed by the word "it" in the act of 1858 meant only the railroad, which was never built, and § 4 of the act of 1858 repealed § 20 of the act of 1857, then the State had no right of reversion to, or any other right to, any of the property and improvements connected with the Basin, Canal and Bayou St. John and the roadways on the sides thereof, and the adjudging of all of this property to the State by the state court without compensation to the company, and executing the act of 1906, was a taking of the company's property without due process of law in violation of the Fourteenth Amendment.

Even if the tenure by which the company held the waterway sued for was a lease, the State, as lessor, could not take the property at the end of the lease and keep the improvements made by the lessee, without making compensation therefor. La. Civ. Code, Art. 2726; *Ross v. Zuntz*, 36 La. Ann. 888.

The State had no title to the Canal and Basin; they were the property of the United States, on which the de-

fendant's antecessor in title had been granted perpetual rights by the legislative council of the Territory of Orleans, with the implied consent of Congress, to which rights the company had succeeded by the legislative direction of the State of Louisiana, and the State had no right to take this property and its improvements and appurtenances from the company except under its contractual right of reversion under the act of 1858.

The grant of the territorial council to the Orleans Navigation Company was valid, and it would have been valid even if made by the State. *Monongahela Nav. Co. v. United States*, 148 U. S. 61.

Even the United States could not have taken the improvements made on the Basin, Canal and Bayou St. John by the grantee of a valid grant without compensation. See *Carondelet Canal &c. v. Tedesco*, 37 La. Ann. 100; *Carondelet Canal &c. v. Parker*, 29 La. Ann. 434; *City v. Carondelet Canal &c.*, 36 La. Ann. 396; *Orleans Nav. Co. v. City*, 1 Martin, (O. S.) 23; *Same v. Same*, 2 *Id.* 214; *State v. Orleans Nav. Co.*, 11 Martin (O. S.), 309; *S. C.*, 7 La. Ann. 679; *United States v. Tyner*, 11 Wall. 92.

Mr. Ruffin G. Pleasant, Attorney General of the State of Louisiana, with whom *Mr. Daniel Wendling* was on the brief, for defendant in error:

The judgment is not final. The case should also be dismissed because no Federal question is involved. *Haseltine v. Central Bank*, 183 U. S. 131; *Navigation Co. v. Oyster Com'n*, 226 U. S. 99; *Missouri &c. Ry. v. Olathe*, 222 U. S. 185; *Norfolk Turnpike Co. v. Virginia*, 225 U. S. 264; *Schlosser v. Hemphill*, 198 U. S. 175.

Plaintiff in error's sole contention is that the lower court did not give to the act of 1858 the interpretation placed thereon by it. This does not present a Federal question.

Act 161 of 1906, providing for the appointment of a

Board of Control to take over the canal, did not impair the contract in the act of 1858.

No specific claim is made in the answer that said act impairs contract obligation, and that act does not impair contract rights.

The State did not rely upon the act of 1906 in support of its demand, but upon the charter and amended charter of the Canal Company.

Section 9 of the act of 1906, creating a Board of Control, provides that the act shall take effect October 1, 1907, and this date was fixed on as the time when said Board should organize as such, and not when it should take over the canal property and improvements.

The Supreme Court held that the State should take over the canal, etc., from the date mentioned in the amended charter of 1858, March 10, 1908, and not the date mentioned in the act of 1906. *Beaupre v. Noyes*, 138 U. S. 397; *Bacon v. Texas*, 163 U. S. 207; *Cross Lake Club v. Louisiana*, 224 U. S. 632; *Central Land Co. v. Laidley*, 159 U. S. 110; *Chappell v. Bradshaw*, 128 U. S. 132; *Clark v. Pennsylvania*, 128 U. S. 397; *Commercial Bank v. Buckingham*, 5 How. 317; *Des Moines v. Railway Co.*, 214 U. S. 179; *Cons. Turnpike Co. v. Norfolk Ry.*, 228 U. S. 599; *De Saussere v. Gaillard*, 127 U. S. 222; *Deming v. Packing Co.*, 226 U. S. 102; *Fletcher v. Peck*, 6 Cr. 87; *Hamblin v. Land Co.*, 147 U. S. 531; *Kennebec &c. R. R. v. Portland &c. R. R.*, 14 Wall. 23; *Knox v. Exchange Bank*, 12 Wall. 379; *Lehigh Water Co. v. Easton*, 121 U. S. 388; *N. O. Water Works v. Am. Sugar Co.*, 125 U. S. 30; *Preston v. Chicago*, 226 U. S. 447; *Ross v. Oregon*, 227 U. S. 150; *Spies v. Illinois*, 123 U. S. 131; *St. Paul Co. v. St. Paul*, 181 U. S. 149; *Turner v. Wilkes Co.*, 173 U. S. 461; *Wood v. Chesborough*, 228 U. S. 672; *Wilson v. North Carolina*, 169 U. S. 586; *Y. & M. V. R. R. v. Adams*, 180 U. S. 41.

The judgment does not give effect to the act of 1906, but rests on entirely independent grounds.

The judgment is broad enough to sustain it without reference to alleged Federal question or giving effect to subsequent act. Cases *supra* and *Arkansas So. Ry. v. German Nat. Bank*, 207 U. S. 270; *Capital City Dairy v. Ohio*, 183 U. S. 238; *Chappell Chemical Co. v. Sulphur Mines*, 172 U. S. 471; *Chesapeake &c. Ry. v. McDonald*, 214 U. S. 193; *Columbia Water Co. v. Ry.*, 172 U. S. 475; *Delaware Co. v. Reynold*, 150 U. S. 361; *Fowler v. Lamson*, 164 U. S. 252; *Fisher v. New Orleans*, 218 U. S. 439; *Hammond v. Johnson*, 142 U. S. 73; *Iowa Central Ry. v. Iowa*, 160 U. S. 389; *Jenkins v. Lowenthal*, 110 U. S. 222; *Klinger v. Missouri*, 13 Wall. 257; *Long Island Water Co. v. Brooklyn*, 166 U. S. 685; *Miller v. Railroad Co.*, 168 U. S. 131; *Mo. Pac. R. R. v. Fitzgerald*, 160 U. S. 556; *Mobile &c. R. R. v. Mississippi*, 210 U. S. 187; *Murdock v. Mayor*, 20 Wall. 590; *Powder Co. v. Davis*, 151 U. S. 389; *Rutland Railroad v. Cent. Ver. R. R.*, 159 U. S. 630; *Snell v. Chicago*, 152 U. S. 191; *Simmerman v. Nebraska*, 116 U. S. 54; *Taylor v. Cass County*, 142 U. S. 288; *Wood Co. v. Skinner*, 139 U. S. 293.

Congressional grants of land to the Orleans Navigation Company do not involve a Federal question; there is no dispute as to the validity or construction thereof.

The ownership of the property is not a factor in the case, as it is agreed to surrender the same at the end of the corporate existence. *Chever v. Horner*, 142 U. S. 122; *Delamar Mining Co. v. Nesbit*, 177 U. S. 523; *Fla. Cent. R. R. v. Bell*, 175 U. S. 328, 329; *Gill v. Oliver*, 11 How. 529; *Gold Washing Co. v. Keyes*, 96 U. S. 199; *Hastings v. Jackson*, 112 U. S. 233; *McStay v. Friedman*, 92 U. S. 723; *Murray v. Mining Co.*, 45 Fed. Rep. 386; *Miller v. Swan*, 150 U. S. 132; *Mill v. Merrill*, 119 U. S. 581; *Maney v. Porter*, 4 How. 55; *Romie v. Cassanova*, 91 U. S. 379; *Theurkauf v. Ireland*, 27 Fed. Rep. 769.

There is no foundation for the claim of want of due process of law. *Bergman v. Backer*, 157 U. S. 655; *Central*

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Land Co. v. Laidley, 159 U. S. 110; *Head v. Amoskeag Mfg. Co.*, 113 U. S. 26; *Londoner v. Denver*, 210 U. S. 379; *Morley v. Lake Shore &c. R. R.*, 146 U. S. 162; *Standard Oil Co. v. Missouri*, 224 U. S. 270; *Twining v. New Jersey*, 211 U. S. 110; *Walker v. Sauvinet*, 92 U. S. 90; *West v. Louisiana*, 194 U. S. 261.

The Bayou St. John has always been held to be a navigable stream.

The State could not barter and sell, and, hence, could not give away the Bayou.

The plaintiff in error was bound to surrender the canal and property on the conditions named in its charter, and these conditions are what the Supreme Court held them to be.

The state court was construing its own statutes, which interpretation is always followed by this court.

If the contract of plaintiff in error, as evidenced by the acts of 1857 and 1858, is ambiguous and doubtful, plaintiff can take nothing thereby, for ambiguous grants are strictly construed against the grantee. Nothing can be inferred against the State. *Barney v. Keokuk*, 94 U. S. 338; 2 *Baudry-Lacantinerie*, "Du Contrat de Louage," p. 1, No. 1395; *Blair v. Chicago*, 201 U. S. 471; *Carondelet Canal Co. v. Tedesco*, 37 La. Ann. 102; *Carondelet Canal Co. v. New Orleans*, 38 La. Ann. 309; *Carondelet Canal Co. v. New Orleans*, 44 La. Ann. 396; *Cleveland v. Cleveland Ry.*, 204 U. S. 116; *New Orleans v. Carondelet Canal Co.*, 36 La. Ann. 397; *Dubuque &c. R. R. v. Litchfield*, 23 How. 66; *Elmendorf v. Taylor*, 10 Wheat. 152; *Enfield v. Jordan*, 119 U. S. 680; *Ill. Cent. R. R. v. Chicago*, 176 U. S. 659; *Maxwell Land Grant Case*, 121 U. S. 325; *Missouri &c. R. R. v. McCann*, 174 U. S. 586; *Canal Co. v. New Orleans*, 12 La. Ann. 365; *Orleans Nav. Co. v. Mayor*, 1 Martin (O. S.) (La.) 269; *Same v. Same*, 2 *Id.* 10, 214; *Rowan v. Runnels*, 5 How. 139; *Ridings v. Johnson*, 128 U. S. 212; *Shivley v. Bowlby*, 152 U. S. 57; *Spears v. Flack*, 34 Mis-

souri, 101; *State v. Orleans Nav. Co.*, 11 Martin (O. S.) 107; S. C., 7 La. Ann. 679; *Stein v. Bienville Water Co.*, 141 U. S. 80; *Tallman v. Coffin*, 4 N. Y. 134; *Williams v. Eggleston*, 170 U. S. 311.

MR. JUSTICE MCKENNA delivered the opinion of the court.

The State of Louisiana brought this suit in the Civil District Court of the Parish of Orleans, State of Louisiana, against the Carondelet Canal and Navigation Company of New Orleans (herein called the canal company) for the recovery from the company, through its liquidators, of the Carondelet Canal, Bayou St. John and Old Basin, a waterway used by vessels for the transportation of freight and merchandise, and for its improvements and appurtenant properties.

The suit was dismissed by the Civil District Court as premature. On appeal to the Supreme Court of the State that court reversed the judgment dismissing the suit and ordered that a judgment be entered against the canal company, in liquidation, ordering the delivery to the State of the canal and waterway in their entirety, as they stood on March 10, 1908, together with all the property and improvements appurtenant thereto, including the roadway or roadways upon the side or sides of the canal.

The claims of the State to a triangular strip of ground hereafter mentioned or to the proceeds thereof, or to any other property, movable or immovable, not appurtenant to the waterway and roadways, were reserved for further adjudication in the proceedings. And an accounting was ordered of the receipts and disbursements in the management of the property since March 10, 1908, and the case was remanded to the District Court "for further proceedings on all questions reserved as above stated, and that the right of the plaintiff to obtain judgment for such an

amount as may be found due upon defendant's accounting, and to take such further proceedings and obtain such further orders as may be required for the execution of this judgment, be reserved." 129 Louisiana, 279, 322.

We refer to the opinion of the Supreme Court for the history of the canal, which, while interesting, is quite long. There is no question of the source and origin of the rights of the canal company; no question of the right of the State to take possession of the canal and its appurtenant properties upon complying with the contract alleged to exist between the State and the company. There is a question as to the extent of the rights of the company under the contract and for what property the State must make compensation, and the factors in the solution of the question require quite an extended discussion.

We are met, however, at the outset by a motion to dismiss on the ground that the judgment is not final.

The judgment disposes of and orders the delivery of practically all of the property sued for: (1) the waterway in its entirety; (2) all the property and improvements appurtenant to it, including the roadway or roadways upon the sides of it. It reserves property not appurtenant and an accounting of certain disbursements. The reservation concerns only a small piece of ground upon which there was a dispute as to whether it was appurtenant to the canal, a question the court apparently could not determine as it was a question of fact. All else will be taken from the canal company and delivered to the State. That is, all was decreed that it was the purpose of the suit to have decreed and which not only constituted its success, but which involved and disposed of the Federal right asserted by the canal company. The judgment, therefore, has a substantial finality. Is it not as well in form?

Cases are cited which, the State contends, require a negative answer to the question. They are distinguishable from that at bar.

In *Haseltine v. Bank*, 183 U. S. 130, the action was against a national bank to recover under § 5198 of the Revised Statutes for usurious interest alleged to have been charged. There was judgment in favor of the plaintiff in the action. It was reversed by the Supreme Court of the State on the ground that he had neither paid nor tendered the principal sum, and the case was remanded for further proceedings. The case, therefore, was remanded for a new trial in its entirety. It was ruled that the face of the judgment is the test of its finality and that this court cannot be called on to inquire whether, when a cause is sent back, the defeated party might or might not make a better case.

This rule was again expressed in *Schlosser v. Hemphill*, 198 U. S. 173, in a case where a right to amend the pleadings existed and a new case could have been made.

In *M. & K. Interurban Company v. City of Olathe*, 222 U. S. 185, a demurrer was sustained to the plaintiff's pleadings in the trial court and the Supreme Court, but the latter court did not direct a dismissal of the suit but left it stand in the court below. We held that the judgment sought to be reviewed was not one which finally determined the cause and that we were without jurisdiction.

In *Louisiana Navigation Co. v. Oyster Commission of Louisiana*, 226 U. S. 99, we repeated the test of finality to be the face of the judgment and expressed the reason to be that this court cannot be called upon to review an action of the state court piece-meal. The language was appropriate to the condition presented by the case, for the pleading in the case was left open for amendment.

In the case at bar there is distinct and explicit finality and the further proceedings are directed to apply only to the "questions reserved." And, it is to be assumed, this was purposely done to give finality to the questions not reserved, so that the decree could be immediately executed

upon the property involved requiring it to be delivered into the possession and administration of the State. This disposition we can easily conceive, the court considered necessary to the rights which the State was adjudged to have and the remedy commensurate with them. The decree, therefore, had a definiteness which did not exist in the cited cases, the Federal rights asserted by the canal company were injuriously disposed of. The ground of dismissal of the writ of error based on the judgment is not, therefore, sustained.

There are other grounds urged, to-wit, that no Federal question is shown, and that besides the decision of the court below was rested on a non-Federal ground sufficient to sustain it. A consideration of this involves the issues in the case and their determination.

The suit involves, as we have said, the right to the canal and its appurtenant properties, and the controversy between the parties turns upon the construction of two acts of the legislature of the State passed, respectively, in 1857 and 1858. Those acts will be referred to hereafter with some particularity. By virtue of those acts the canal company derived its rights and its corporate existence. The petition of the State presents the following propositions: (1) The act of 1857 (act No. 160), gave the canal company a corporate existence of twenty-five years from October 17, 1857, with power in the State to take possession of the canal and appurtenant properties. If the State should not exercise such right at such time then the company was to have existence for a second term of twenty-five years, at which time the canal and its appurtenant properties were to be surrendered to the State without compensation to be paid to the company. (2) By the act of 1858 (Act No. 74) the charter existence of the company was extended to fifty years and at the expiration of such period the property was to be surrendered to the State without the necessity of compensation being made

therefor. (3) In 1906 (Act No. 161), in order that the State should be in a position to assume control and take possession of the property, the legislature passed an act creating a Board of Control of the canal, to be appointed by the Governor. This board was appointed and the property demanded. (4) The company refused to comply with the demand on the ground that the State had not complied with certain alleged contract obligations which the canal company claimed under § 4 of the act of 1858 and which gave it greater rights to the property than did the act of 1857, and until such obligations were performed the company would refuse to deliver the property. (5) If such was the effect of the act of 1858 the act was void as being in violation of the constitution of the State, especially of articles 108 and 109, which prohibited the granting of aid by the State to companies and corporations formed for the purpose of making works of public improvement. And further, if the company have the right to demand compensation, it has no right to claim against the State the property and improvements connected with or which belong to the Carondelet Canal, the Bayou St. John and the Old Basin on Toulouse Street, the State being sole owner of that part of the property. (6) The New Orleans Terminal Company, in a suit to expropriate a triangular piece of ground upon which stood the office building of the company, was condemned to pay \$3,000, which sum was deposited in bank by agreement to await the determination of whether the State or the company should be entitled thereto. (7) The company has collected tolls through its liquidators since the expiration of its charter.

The State prayed an accounting of the revenues of the property after the expiration of the charter of the company, and that all the property and improvements connected with and appurtenant thereto, including the \$3,000, the proceeds of the triangular piece of ground

referred to above, be delivered to the Board of Control created by the act of 1906 to be administered through the board.

Exceptions were filed to the petition of the State, and having been overruled an answer was filed. We need give only its basic allegations. They present, after denying the allegations of the petition of the State, the following propositions: (1) The State had no interest in the canal except under the contract between the canal company and the State, constituted of the acts of 1857 and 1858. (2) In 1857 the legislature, after anticipating the inability of a company called the New Orleans Canal and Navigation Company to carry out the terms of the purchase of the property under an act passed in 1852 (Act No. 309, March 18, 1852), passed the act of 1857, and that under those acts the canal company became possessed of the property. By § 4 of the act of 1858 (hereafter set out) it was provided that the company should have corporate existence during fifty years from the date of the act, after which time it might revert to the State upon due compensation being made according to award by three commissioners. (3) If the act of 1906 can be construed to authorize the Board of Control to take possession of the property without compensating the company therefor, it violates the contract clause of the Constitution of the United States. (4) The State never claimed any right or property in or to the canal and the improvements respectively made thereon by the Orleans Navigation Company and its successors, and whatever rights the State has are derived solely from the contracts between it and the canal company as defined in the acts of 1857 and 1858. The State never spent a dollar on the canal, the basin or the bayou, but the canal company has spent thereon a sum exceeding \$750,000.

The State, as we have said, made a motion to dismiss on two grounds, one of which we have decided; the other is

that no Federal question is presented by the record, the canal company failing to distinguish, it is contended, between a subsequent act of the legislature impairing the contract and the decision of the court construing it. The question then is whether the act of 1906, appointing the Board of Control and investing it with powers, was an act which impaired the obligation of the contract, and in the solution of the question we must assume that the act of 1858 constituted a contract between the State and the canal company. The negative of the question is urged by the Attorney General in an argument of strength in which he contends the court did not consider or give any effect to the act of 1906 but considered only the act of 1858 and decided that the canal company did not acquire the rights under it which the company contends for. In other words, decided that the act of 1858 gave no rights which the State did not already have and which it was entitled to possess upon the expiration of the charter of the canal company. There is, as we have said, strength in the contention, but, of course, the fact that the Supreme Court did not refer to the act of 1906 does not put it aside from consideration. If it was the assertion of legislative power against the contract of the company and a legislative provision against the obligation of the contract, and was an essential, although unmentioned, element of the decision under review, it is a basis for the Federal question set up. Nor need bad motives be imputed to the legislature. It is not the motive which caused the enactment of the law which is of account, but the effect of the enactment, impairing the rights resting in the contract. And this, we think, was the effect of the act of 1906. It was treated as an important factor in the State's petition in both the charging part and the prayer. The Board of Control had something else to do besides to wait. It was an agency of invasion and it was by its especial command that the Attorney General made demand upon the com-

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pany.¹ And in this the board exercised the power given it; and to remove the impediments to the exercise of the power, "all laws and parts of laws in conflict with" the act of 1906 which conferred the power were repealed. The repeal of a law which constitutes a contract is an impair-

¹ "Messrs. A. J. Davidson, J. H. Elliott and Hans Widner, Liquidators of the Carondelet Canal and Navigation Co., of New Orleans, New Orleans, La.:

"Dear Sirs—In view of the fact that the time during which the Carondelet Canal and Navigation Company of New Orleans has had the right to enjoy the possession and control of the Carondelet Canal and Bayou St. John, together with the Old Basin, with all of the revenue derived therefrom, has expired, and that it becomes the duty of the State of Louisiana, through the Board of Control for the Bayou St. John and Carondelet Canal and Old Basin, to take possession of the said Carondelet Canal, Bayou St. John and Old Basin, together with all the property and improvements connected therewith, or in any wise thereto belonging or appertaining, in order that the same may be controlled, managed, and administered by said board, for the use and benefit of the State, and, in view of the further fact that, at a meeting of said Board of Control, held on the first day of October, 1908, a resolution was adopted requesting me, as Attorney General of the State, to take such action as, in my judgment, would be proper to 'have the State put into possession of the Bayou St. John, Carondelet Canal and Old Basin, and all its properties and rights,' I now hereby make formal demand upon you to deliver into the possession and control of the said Board of Control of the Bayou St. John and Carondelet Canal and Old Basin, the said Bayou St. John and Carondelet Canal and Old Basin, together with all the properties and improvements connected therewith or in any wise thereto belonging or appertaining. In default of your complying with this formal demand, within a reasonable delay, I now notify you that I will institute suit for the purpose of recovering, for the State, to be controlled, managed and operated by the Board of Control aforesaid, the said Carondelet Canal and Bayou St. John and Old Basin, together with all the properties and improvements connected therewith or thereto belonging or appertaining.

"Be pleased to let me hear from you at your earliest convenience, and oblige,

"Yours truly,

(Signed) "WALTER GUION,
"Attorney General."

ment of its obligation. "It may be laid down, as a general principle, that, whenever a law is in its own nature a contract, and absolute rights have vested under it, a repeal of that law cannot divest those rights, or annihilate or impair the title so acquired." 2 Story on the Constitution, § 1391. The provision of the Constitution against the impairment of the obligation of contracts was intended "to prohibit every mode or device having such purpose. The prohibition is universal. It attempted no enumeration of the modes by which contracts might be impaired. It would have been unwise to have made such enumeration, since it might have been defective." *Id.*, § 1386. The precaution was necessary. The prohibition is directed against the exertions of sovereignty which the citizens, unless protected by the organic law, would be impotent to resist, whether boldly declared in an explicit law or disguised in an ambiguous form. This case is an illustration. Here is a property sought to be taken from the canal company, and there can be no doubt that the Board of Control, through the affirmative and repealing provisions of the act of 1906, was to be the instrument and moving agency. The motion to dismiss must, therefore, be denied, and we are brought to the merits of the controversy—Did the acts of 1857 and 1858 constitute a contract?

In the consideration of that question we do not think it is necessary to discuss with any particularity the contributions, respectively, of the State and the canal company and its predecessors to the construction of the canal and its appurtenant properties. The case exhibits from the first conception and commencement of the enterprise by Governor Carondelet through its successive development and extension the interest the State had in its accomplishment and the difficulties which had to be overcome, two corporations going down to insolvency in the undertaking, the State being compelled to resume the

powers it had conferred and make provision for granting them to more efficient instruments. In these circumstances we find the impelling causes of the act of 1857.

A word or two of the act of 1852 becomes pertinent. It provided that in case of a judgment of forfeiture against the Orleans Navigation Company a liquidating commissioner should be appointed who should take possession of the entire property of the company, real and personal, movable and immovable, and, after advertisement, sell the same in block at public auction. The conditions of sale were that the purchasers should "organize themselves into a corporation under the laws of this State, for a term of twenty-five years, for the purpose of carrying out and effecting all the improvements detailed and described in the reports and plans known as Harrison's reports and plans, including the construction of a new basin at the junction of Canal Carondelet and Bayou St. John, of the depth and dimensions set forth in said reports," and to actually complete them within the term of three years from the date of the charter of the corporation. It was provided that at the end of the term of twenty-five years the State should have the option of granting a renewal of the right of receiving the tolls for a second term of twenty-five years or of purchasing for itself "the property and the improvements of the company" at the appraised value thereof, and provided further that if the said term of twenty-five years be granted, the whole property should revert to the State at the end of the second term, without any payment of compensation made to the company. Work and improvements were to be commenced within six months and completed within six years, otherwise the right, title and interest acquired, together with the improvements that might be made, should vest in and belong to the State. The purchasers organized themselves into a corporation called the New Orleans Canal and Navigation Company.

Then came the act of 1857. It organized the present canal company, making the capital stock of the company \$500,000. The company was authorized to take possession of the canal for the purpose of completing the works of improvement undertaken and commenced by the New Orleans Canal and Navigation Company under the provisions of the act of 1852. The canal company was given authority to depart from the plan "of the improvement of said Canal and Bayou" designated as 'Harrison's plan,' so far as the plan proposes a basin at the junction of the said Canal with the Bayou, if the board of directors should determine that such works were not demanded by the interests, safety or convenience of commerce.

It was provided that in case of the New Orleans Canal & Navigation Company's failure to perform the obligations undertaken by it, suit should be instituted to forfeit its charter, franchises and privileges and property, including the interest in the Canal Carondelet and Bayou St. John and the works done and effected therein, which, after appraisement, should be sold and payment made therefor in the stock of the new corporation, the canal company. With expressions of detail, it was provided that the new company might take and have all and singular the rights, privileges, franchises, immunities, powers and authority which had been at any time granted to and possessed and exercised by the Orleans Navigation Company under §§ 9, 10, 11, 12 and 13 of the act of 1850 and those possessed and exercised under the acts of 1850 and 1852 by the New Orleans Canal & Navigation Company. The new company was to assume all of the debts and obligations imposed on the old one by the act of 1852, except in so far as the provisions of said act were modified or changed in and by the act of 1857.

The canal company was required to complete the works required by the act of 1852 within three years from and after the seventeenth of October, 1857, subject to the

modification provided, and in the case of failure the franchise, rights, privileges and immunities granted should cease and be forfeited to and become the property of the State.

The canal company was given an existence of twenty-five years from and after the seventeenth of October, 1857, "provided that the State of Louisiana shall have the right to take possession of said Canal Carondelet and Bayou St. John, and all the property and improvements connected therewith, at the expiration of the term above mentioned, should the Legislature determine so to do, paying to this corporation the value of said property, to be appraised by five competent persons, as experts, two to be appointed by this corporation and two by the Governor, and the four thus appointed shall appoint a fifth; said experts shall be required to take an oath to discharge their duty faithfully. In the event that the State shall not determine to take possession of said property, as herein provided, then this corporation shall be in existence for twenty-five years from and after the expiration of the term in this section mentioned aforesaid, and at the end of such second term of twenty-five years, the said property may still become absolutely the property of the State of Louisiana, and no compensation required to be made to this corporation." (§ 20, Act No. 160, March 16, 1857.)

The act of 1858 comes next to be considered. It gives the right to construct lay-outs, basins, and half moons, for steam and any other water craft on the Bayou St. John, the basin and canal and to extend them, provided public roads be constructed around them and be kept subject to the ordinance of the city of New Orleans.

The company was given (§ 2) the right to construct a railroad, with single or double track, on either side of the Basin, Canal and Bayou St. John from the head of the basin, on Toulouse Street, to the lake end, and transport freight and passengers for hire and employ steam loco-

motives within such limits of the city as the common council may prescribe.

After five years from the passage of the act, the city was prohibited from draining in the bayou except upon payment of indemnity. And the city is given the right to build bridges over the canal and bayou.

Section 4 is as follows: "That the said company shall enjoy corporate succession during fifty years from this date; after which time *it* [italics ours] may revert to the State, upon due compensation being made according to award, by three commissioners, one appointed by the Governor of the State, one by the company, and the third by any Court of Record of New Orleans." (Act No. 74, March 10, 1858.)

By subsequent section the company is given the right to tow vessels; exclusive power to carry out their works in conformity with such plan or plans as it may at any time adopt and deem best calculated to forward the interests of commerce; to impose fines for violation of its rules; to issue bonds and to secure them by hypothecating and mortgaging "all its property, privileges, and immunities whatever," the amount of bonds not to exceed \$250,000; and the company shall be exempt from taxation.

The controversy centers in § 4 and turns upon the antecedent to the pronoun "it" in the sentence "after which time *it* may revert to the State."

The natural and grammatical use of a relative pronoun is to put it in close relation with its antecedent, its purpose being to connect the antecedent with a descriptive phrase. In the provision under discussion "it" stands in the place of something that is to revert to the State, and, following, therefore, the natural and grammatical use of "it," its antecedent would be the noun "company" (said company). The Supreme Court of the State, however, considered that there was ambiguity in the relation of "it" and rejected "company" as the antecedent and observed

that it could not relate to any of the things provided for in succeeding sections nor to the "lay outs, basins and half-moons" mentioned in § 1 and decided that the antecedent was the railroad authorized to be constructed by the canal company by § 2. The court, after elaborate argument, expressed the view that the company could not revert to the State, and, as it had no property in the canal and its appurtenances, the only thing which could revert to the State was the railroad. "Whether this be the true solution of the problem or not," the court said, p. 310, "we are unable to find anything else in the act of 1858 than the railroad to which the relative 'it,' as used in section 4, can in any way be made to relate." And it was further said that there being nothing else to which "it" could relate other than the railroad and that, "having never been built, can afford no basis for defendant's demand for compensation and for a continuance of its possession of public property" (p. 320).

We are unable to concur in the learned court's conclusion. We have already pointed out that the first companies organized went down successively in bankruptcy. Neither the rights given them nor the purpose for which they were given averted financial disaster. The same rights and property, in the main contingent upon the same conditions, were conferred upon the canal company, the record shows, by the act of 1857, but they offered no prospect of success and the company was about to abandon its charter, when the act of 1858 was passed. It was effective, and its effectiveness must have been due to the additive rights which it conferred and the security which it gave them. We have stated its provision and those of the acts which preceded it. Let us repeat them, for in them we shall find the answer to the question whether any property existed in the canal company which could revert to the State, under § 4 of the act of 1858, except the railroad. For the answer we need not go farther back than

1852. In the act of that year the rights and property of the Orleans Navigation Company were conveyed through its liquidators after proper legal proceedings to certain individuals who were to organize themselves into a corporation for the term of twenty-five years which was to undertake the construction of the work, with an option on the part of the State to grant a renewal of rights for another term of twenty-five years "*or of purchasing for itself the property and improvements of the company at the appraised value thereof.*" In case of the grant of a second term, at its end "*the whole property*" was to revert to the State "*without any payment or compensation made to said company.*"

These provisions are a recognition of a property interest in the canal which would be acquired by the corporation that was to be organized. This is put beyond doubt by a subsequent provision. If the corporation did not complete the work in the time the act designated, it was provided that "*all right, title and interest acquired by the purchaser, under the provisions of this act, together with any improvements that may be made, shall vest in and belong to the State.*"

The corporation was organized, as we have said, and became the New Orleans Canal and Navigation Company. The latter company failing to perform its undertaking, the Carondelet Canal and Navigation Company, plaintiff in error, was, under the act of 1857, organized, and possession of the property was given to it for the purpose and with the rights, powers and privileges as provided in the act of 1857. There was a provision in that act, as we have seen, as in the act of 1852, for successive corporate terms of twenty-five years. At the end of the first term the State should "have the right to take possession of said Canal Carondelet and Bayou St. John, and all the property and improvements connected therewith, . . . should the legislature determine so to do," upon paying the value

thereof, to be appraised in the manner provided. If the State did not elect to purchase the property as provided, the second term of twenty-five years began, at the end of which it was provided that the "said property may still become absolutely the property of the State of Louisiana, and no compensation required to be made" to the canal company.

These provisions were idle—barren of everything but mischief and misleading effect—if the contention now made is tenable that the canal company, and necessarily as well its predecessors in the work, could acquire no property because the Bayou St. John was navigable water and the improvements had become appurtenant to it. Under the comprehensiveness of the contention there were no "property and improvements" to appraise or purchase, although the act declared there were both; there was no property to revert to the State, although the act provided for it, and took the precaution of excluding the requirement of paying for it. These circumstantial provisions cannot be misunderstood. They were not a precaution against the assertion of unfounded rights; they were the recognition of rights to be purchased and paid for in one contingency, to revert to the State without "compensation made" in the other contingency.

There was something more than a prospective railroad for "it" to relate to and we might consider the contention of the State disposed of without the necessity of further discussion. The Supreme Court recognized that as "the act of 1858 contains no repealing clause, and the act of 1857 is in *pari materia*, the search for the vagrant antecedent [it was so considered by the court] may be prosecuted in the last mentioned statute" (p. 310). The court, however, did not locate the antecedent there because of the view that the railroad was the only property that the canal company had which could revert to the State. But, we have seen, there was property provided

for in the act of 1857 substantial enough to have value to be appraised and purchased, substantial enough therefore to revert to the State. Not, it may be, property to be considered the antecedent looked for but significantly determining it to be something else than the railroad which was but a subordinate instrument in the scheme and which might or might not be built.

The rights and property conveyed and provided for by the act of 1857 were then of substance and value and yet the enterprise halted. We need not conjecture the cause. It is manifest that the failures of the past warned against the conditions of the act of 1857. A large sum of money was necessary. It was conceived it might be as much as \$500,000, and to encourage its investment the act of 1858 was passed. This being its purpose, whatever changes it made in the act of 1857 it must be construed as having been adopted to effect such purpose. A prominent fact in it was that it contemplated a greater expenditure than the capital of the company and authorized an issue of bonds of not exceeding \$250,000. It is true that it was provided that the sum should be employed upon the improvement of the navigation of the canal and the building of the railroad; but, notwithstanding, the authorization of the bonds indicates the conception of the amount necessary for the undertaking.

The act of 1858 made other changes to which we have referred and it may be assumed that all of them were of some value to the State or to the company or to both. The Supreme Court assigned a special value to the power given to the company to adopt its own plans instead of being confined to the Harrison report and plans. The record, however, affords no basis of estimating the importance of this choice; besides by the act of 1857 the company had been authorized to depart from Harrison's plans in certain particulars, and what would have remained of them after exercises of the right we have no means of

knowing. But it was certainly not intended by the discretion conferred to give the company power to construct the works in a cheap and inefficient manner, and it is not intimated that the discretion was not wisely conferred or not wisely exercised.

We must look, therefore, for some other motive for the act of 1858, and we think, as said by Mr. Justice Provosty in his dissenting opinion, that it "will be sought for in vain, unless it is to be found in the purpose of prolonging the unconditional life of the company and the doing away with the clause for the reversion of its property without compensation." This conclusion is fortified by the structure of the act and the relation of its parts. We have seen that the natural and grammatical antecedent of "it" in § 4 is "said company," and that it was the intentional antecedent is clear from the French version of the statute, the practice of the State at that time being to publish statutes in French and English.

The use of "*elle*" in the French version is of strong significance. There is no neuter gender in the French language, every noun is masculine or feminine, and the pronoun which stands for it must agree with it in gender as in English, but in French there is more certain indication of the antecedent. The neuter *il* relative to a noun is *il* or *elle* and therefore the use of *elle* in the French version points unmistakably to an antecedent of the same gender—to "*cette compagnie*," and not to "*un chemin de fer*." Thus, wholly aside from which text is controlling, the context of both versions removes all doubt as to the meaning of the laws.

It is true, in a sense, that the company could not revert, for as a legal entity it would expire; but what it represented and possessed could revert—the result of its investments and energies, the property it had acquired under legislative sanction and the property it had created under like sanction. The company stood for its attributes and property.

It may be that it did not own the canal, or the bayou or the old basin. Indeed, ownership of their soil was disclaimed at the bar. But, we repeat, there was valuable property which the statute contemplated could revert and could be compensated for. *Monongahela Navigation Co. v. United States*, 148 U. S. 312.

The Attorney General separates in his argument the canal, the bayou and the old basin from the other properties and urges that at least as to them the State is entitled to take possession. And he seems to concede that the act of 1858 contemplated payment to the canal company not only for the railroad but also for the 'lay-outs, basins and half-moons'—giving "it" an antecedent of greater scope than did the Supreme Court. To the contention, however, that a distinction may be made between the properties, it must be answered that neither the act of 1857 nor that of 1858 makes such a distinction. The language of the act of 1858 is comprehensive and provides that all which is represented by "it" "may revert to the State upon due compensation being made according to award." And the same answer must be made to the contention that the company only has a lease of the properties and that its relation to the State being that of lessee, it, therefore, "has no defense to the State's demand for possession of the property." Whatever the relation created, payment of compensation was a condition precedent of the reversion to the State. It certainly was not intended to remit the canal company to a claim against the State. How would it be enforced against the resistance of the State, the sovereignty of the State giving immunity from suit?

Judgment is reversed and the case remanded for further proceedings not inconsistent with this opinion.